Entered

FILED

FEB 20 1985

Jack C. Silver, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROBERT W. TURNER,

Plaintiff,

-vs-

INSURANCE COMPANY OF NORTH AMERICA, a Pennsylvania corporation,

Defendant.

Case No. 84-C-792 B

O R D E R

Pursuant to the Stipulation of Dismissal entered into between the Intervenor, Community Bank and Trust Company, and the Defendant, Insurance Company of North America, it is hereby ordered that the claim of the Intervenor, Community Bank and Trust Company, against the Defendant, Insurance Company of North America, is dismissed with prejudice to refiling.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

Entered

FILED
FEB 28 1985
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
GARY D. MEDLOCK,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 85-C-29-B

NOTICE OF DISMISSAL

COMES NOW the United States of America by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through James E. Pohl - Special, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 26th day of February, 1985.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

JAMES E. POHL - Special
Assistant United States Attorney
460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 28th day of February, 1985, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Gary D. Medlock, Route 2, Box 404, Chelsea, Oklahoma 74016.

Special Assistant U.S. Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DAPHNE L. FRANKLIN, Plaintiff, vs. AMERICAN EXPRESS COMPANY, a New York corporation, and FINANCIAL COLLECTION AGENCY, a New York corporation, Defendants.	)	No. 84-C-952-E

FILED

FEB 28 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL

NOW, on this 27th day of February, 1985, the Court being advised that a compromise settlement has been reached between the Plaintiff and the named Defendants, and those parties stipulating to a Dismissal with Prejudice, the Court orders that the captioned case be dismissed with prejudice as to American Express Company and Financial Collection Agency.

UNITED STATES DISTRICT JUDGE
FOR THE NORTHERN DISTRICT OF
OKLAHOMA

LAW OFFICES

UNGERMAN,
CONNER &
LITTLE

MIDWAY BLDG.
2727 EAST 21 ST.
SUITE 400

P. O. BOX 2099
TULSA, OKLAHOMA
74101

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RUSSELL GORDON WOODS,)
)
Plaintiff,)
)
vs.) No. 84-C-750-E
)
JERRY JOHNSON, et al.,)
)
Defendants.)

FILED

FEB 28 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

NOW on this 26th day of February, 1985, comes on for hearing the above styled case and the Court, being fully advised in the premises finds Petitioner was convicted by jury in Tulsa County District Court in Case No. CRF-81-803 of Burglary in Second Degree, After Former Conviction of Two or More Felonies and was sentenced to twenty-two years' imprisonment.

The conviction was appealed to the Oklahoma State Court of Criminal Appeals, case number F-82-715, and the Court, in a published opinion, 674 P.2d 1150 (Okl.Cr. 1984) affirmed the conviction.

Petitioner raised three grounds of error on appeal:

(1) That statements made by him to police should have been suppressed for failure to establish probable cause to justify his warrantless arrest;

(2) That the trial court erred in failing to swear the jury prior to the commencement of trial pursuant to 22 O.S. 1981 § 601; and (3) that he was prejudiced by comments made by the prosecutor during his

closing argument.

The Court of Criminal Appeals, rejecting all three contentions as being without merit found:

(1) There was probable cause for the arrest under Bradfield v. State, 648 P.2d 1239 (Okl.Cr. 1982) and that the statements made to police after arrest were not incriminating in that he testified to substantially the same facts at trial; therefore no prejudice resulted in allowing these post-arrest statements;

(2) The alleged fact that the jury was not sworn prior to start of trial pursuant to 22 O.S. 1981, § 601 was not grounds for reversal because:

(a) This assignment of error was not properly preserved for appeal in that Petitioner made no objection at trial concerning failure to swear the jury and did not allege this as an assignment of error in his motion for new trial and petition in error; and

(b) Had this assignment of error been preserved for appeal it would have been no basis for relief because under Oklahoma law when the jury verdict, as in this case, states "we the jury drawn, impaneled and sworn in the above titled cause do upon oaths find the Defendant guilty", and is signed by the jury foreman, this is sufficient to find that the jury was

sworn according to law;

(3) The prosecutorial comments Petitioner assigned as error do not constitute a basis for relief because:

(a) This ground was not properly preserved for appeal as no objection was made to the comments at trial nor was request made that the jury be admonished to disregard the comments; and

(b) It does not appear that such remarks unduly prejudiced Petitioner; and

(4) As there was no individual error, there could be no error by accumulation.

Petitioner now files writ of habeas corpus with this Court raising the same basic arguments as presented before the Oklahoma State Court of Criminal Appeals.

In response to Petitioner's assertions, Respondents state that such allegations constitute claims of error under state law; and that claims of state procedural and trial errors without more do not give rise to relief under 28 U.S.C. § 2254. Respondent further urges the errors alleged by Petitioner do not rise to the level of deprivation of fundamental rights reserved to a criminal defendant under the Constitution of the United States. Respondents final argument is that Petitioner is procedurally barred from raising alleged errors in habeas action because they were not properly preserved for appeal at trial.

After careful consideration and review of the trial record and pleadings in this case, this Court finds that Petitioner's

claims allege error under state law and therefore he is not entitled to relief in a federal habeas suit unless he demonstrates that the alleged state court errors deprived him of fundamental rights guaranteed under the Constitution of the United States. Brinlee v. Crisp, 608 F.2d 839 (10th Cir. 1979), citing Hickock v. Crouse, 334 F.2d 95, 100 (10th Cir.), cert. denied, 379 U.S. 982, 85 S.Ct. 689, 13 L.Ed.2d 572.

Petitioner's claim that trial court erred in not swearing the jury before trial commenced as required by 22 O.S. 1981, § 601 does not constitute a basis for federal habeas relief. In hearing habeas corpus petitions of state prisoners, federal courts are bound by interpretation by state courts of state laws unless it is clearly shown that such interpretation violates fundamental rights under the United State Constitution. Chavez v. Baker, 399 F.2d 943 (10th Cir. 1968), cert. denied 394 U.S. 950. Therefore this court will not disturb the Oklahoma State Court of Criminal Appeals' determination that the jury in this case had been properly sworn.

The record also reflects that this assignment of error was neither objected to at trial nor alleged in motion for new trial and petition in error and thus is waived because not properly preserved for appeal.

Where irregularities occur in selections, summoning and impaneling a jury, Defendant must object at the proper time and such objection is waived if raised for the first time on appeal unless it is shown that defendant's rights have been substantially prejudiced. Boyd v. State, 97 Okl.Cr. 331, 263

P.2d 202 (1953). A review of the record does not show that this alleged error prejudiced Petitioner. Habeas Corpus relief on this ground should therefore be denied.

Petitioner's claim that post arrest statements made to police should have been suppressed at trial because there was no probable cause established for his warrantless arrest is similarly without merit. The standard for finding probable cause is set forth in Beck v. State of Ohio, 379 U.S. 89, 85 S.Ct. 223 (1964) wherein the court stated:

> Probable cause to make an arrest turns upon the question of whether at the time of arrest the facts and circumstances within the officer's knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the Petitioner had committed or was committing an offense. 379 U.S. 91, 85 S.Ct. 225, citing Brinegar v. United States, 338 U.S. 160, 176-176.

The facts in this case show that there was sufficient probable cause to justify Petitioner's arrest, therefore remarks made to police after Petitioner's arrest should not have been excluded on this basis.

The Court further finds that in light of the fact that Petitioner's testimony at trial included the same information that he gave to police in his post arrest statements, such statements did not prejudice Petitioner when they were allowed at trial.

Finally, Petitioner asserts that prosecutorial statements made during closing argument were so prejudicial as to require a reduction in Petitioner's sentence. This Court does not agree.

Petitioner is procedurally barred from raising this assignment of error as it has not been properly preserved for appeal. He neither objected to such statements at trial nor requested the court to exclude such remarks from jury's consideration. Hill v. State, 589 P.2d 1073 (Okl.Cr. 1979). This Court further finds that the sentence imposed in this case was not excessive and has not been shown to have been the result of allegedly prejudicial statements made during the prosecution's closing argument.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner's writ of habeas corpus be and is hereby denied.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DANNY L. WILLS, Plaintiff, vs. BURLINGTON NORTHERN RAILROAD, INC., A DELAWARE CORPORATION AND HOWARD E. TOWNSON, Defendants.	)	No. 84-C-65-E

FILED

FEB 28 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

JUDGMENT DISMISSING ACTION BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown within twenty (20) days that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

DATED this 28th day of February, 1985.

James O. Ellison

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 28 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

KENNETH A. MORRISON,

Plaintiff,

vs.

AARONS' A-1 TRANSMISSION SERVICE, INC., and DAVID A. GOODMAN,

Defendants.

No. 83-C-563-E

ORDER OF DISMISSAL

On this 28th day of February, 1985, the above matter comes on for hearing upon the written Application to Dismiss Without Prejudice against Defendant, DAVID A. GOODMAN, only, of the Plaintiff herein. The Court having examined said Application, and being fully advised in the premises, finds that said cause of action against Defendant, DAVID A. GOODMAN, should be dismissed for the reason that Plaintiff was not able to obtain service of process on said Defendant within the time allowed by law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the above-entitled cause of action against Defendant, DAVID A. GOODMAN, be and the same is hereby dismissed without prejudice.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DYCO PETROLEUM CORPORATION, a Minnesota corporation,

Plaintiff,

vs.

OIL FIELD SYSTEMS CORPORATION, a corporation,

Defendant.

No. 84-C-23-C

J U D G M E N T

This action came on for determination by the Court upon agreed submissions and stipulations of the parties and the issue of liability having been duly tried and a decision having been duly rendered in accordance with the Findings of Fact and Conclusions of Law filed simultaneously herein,

IT IS SO ORDERED AND ADJUDGED that the defendant Oil Field Systems Corporation is liable to plaintiff Dyco Petroleum Corporation for its pro rata share of defaulted billings of Bartex Exploration, Inc. pursuant to the drilling of the dry hole on the Fillingim #1-88 well. The amount of damages remains to be determined later.

IT IS SO ORDERED this 26th day of February, 1985.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Petitioner,

vs.

SYNERGY GAS COMPANY,

Respondent.

No. 84-C-98-E
M-1036-E

O R D E R

The Court has now before it the motion of the Petitioner for an order compelling production of documents and imposing sanctions filed December 19, 1983 and a motion of Respondent to stay execution of the Court's Order and impose sanctions on the Petitioner filed December 30, 1983.

On January 13, 1983 the Equal Employment Opportunity Commission filed a Petition to enforce a subpoena duces tecum. This Court on February 2 issued an Order to Respondent to show cause on March 9, 1983 why this Court should not enforce the administrative subpoena. Respondent subsequently filed a motion to dismiss. At the hearing this Court denied the motion of Respondent to dismiss and ordered Respondent to give the Petitioner access to the records identified by subpoena number 8 at its Farmingdale, New York office within 30 days. On April 6, 1983, Respondent filed its notice of appeal.

On December 19, 1983 Petitioner filed its motion for an Order compelling production of the documents and for an Order imposing sanctions on the Respondent for failure to comply with

the Court's March Order. Petitioner asserted in its motion that the Respondent had failed to comply with the Court's Order in that it had failed to provide access to the documents mentioned in subpoena number 8.

In its response brief the Respondent Synergy Gas Co. asserts that counsel for the EEOC, Mr. Patrick Matarazzo, did not appear at Synergy's offices in Farmingdale, New York within the 30-day period mentioned in the Court's Order nor at any time thereafter to examine or obtain copies of the records in question. (See the affidavit of Jay Douglas Mann attached to the brief of Respondent filed December 30, 1983.) In fact no contact was had between Petitioner and Respondent in regard to the production of records until October 20, 1983 when Mr. Richard Deaguero, counsel for the EEOC, wrote to Daniel Shientag making a demand for the production of documents.

Petitioner asserts in its motion that the Respondents have failed to request a stay of enforcement of the Court's Order and that therefore they are not relieved from their duty to produce the documents. In its brief in response, Respondent Synergy Gas Co. requests a stay of this Court's Order of March 18, 1983 pursuant to Rule 62(d) of the Federal Rules of Civil Procedure. 62(d) allows an appellant to obtain a stay by giving a proper supersedeas bond at or after the time of filing the notice of appeal. Petitioner had argued that Respondent would not be entitled to a stay of the Court's order pending appeal because it could not meet the irreparable harm standard of Reserved Mining

Co. v. United States, 498 F.2d 1073 (8th Cir. 1974). Respondent asserts that Reserved Mining does not apply in this case and cites United States v. Neve, 80 F.R.D. 461 (E.D. La. 1978) as applicable in this situation. In Neve, the court ordered compliance with a summons of the Internal Revenue Service. The district court rejected arguments that Reserved Mining applied, and held that the case did not involve the enforcement by District Court of an Internal Revenue summons but involved injunctive relief. The Court additionally held that no harm would result from the testing of the sufficiency of the summons in the appellate court.

Under either view this Court finds that a stay would be appropriate in this case according to the representations of the parties. The Tenth Circuit Court of Appeals has set this case for argument on Tuesday, March 13, 1984. Despite its claims of urgency, Petitioner Equal Employment Opportunity Commission has failed to make its own investigation of the records as was envisioned in the Court's March, 1983 Order. In fact Petitioner did not seek to enforce the Court's Order until nine months after its issuance.

In view of the issues presented on appeal, the conduct of the parties herein, and the probability of a ruling within a short time from the Tenth Circuit this Court finds that a stay of enforcement of its Order pending appeal would be proper in this case.

IT IS THEREFORE ORDERED AND ADJUDGED that the motion of the Petitioner for an Order compelling production of documents filed December 19, 1983 be and the same is hereby denied.

IT IS FURTHER ORDERED that the motion for imposition of sanctions upon the Respondent for failure to comply with the Court's Order, contained within Petitioner's December 19, 1983 motion, be and the same is hereby denied.

IT IS FURTHER ORDERED that the motion of the Respondent to stay execution of the order of the Court be and the same is hereby granted effective upon the posting of a supersedeas bond in the amount of $ 500.00.

IT IS FURTHER ORDERED that the motion of Petition to impose sanctions on the EEOC, contained within its December 30, 1983 motion, be and the same is hereby denied.

ORDERED this 27th day of February, 1984.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

FILED

FEB 27 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TED W. FORD,

Plaintiff,

vs.

FRANK THURMAN, et al.,

Defendants.

No. 83-C-1072-E

ORDER

THIS matter is before the Court on remand from the United States Court of Appeals for the Tenth Circuit. This Court has previously dismissed counts two and three of the petition for failure to exhaust available state remedies. Pursuant to Rose v. Lundy, 455 U.S. 509 (1982) this Court must dismiss petitions for habeas corpus relief which contain both exhausted and unexhausted claims.

IT IS THEREFORE ORDERED AND ADJUDGED that count one of the petition for writ of habeas corpus be, and the same is hereby dismissed.

ORDERED this 27th day of February, 1985.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

19

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LINDA GADELMAN,

Plaintiff,

v.

No. 84-C-464-B

DEBRA GALLUP,

Defendant.

ORDER OF DISMISSAL

Now on this 26th day of February, 1985, it appearing to the Court that this matter has been compromised and settled, this case is herewith dismissed with prejudice to the refiling of a future action.

S/ THOMAS R. BRETT

United States District Judge

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DANIEL H. FRANKLIN and MARLENE F. FRANKLIN, a/k/a MISSY FRANKLIN, husband and wife, Plaintiffs,	)	
v.	)	No. 84-C-314-C
SAFEWAY STORES, INC., a Maryland corporation, Defendant.	)	

ORDER OF DISMISSAL

Now on this 26 day of Feb, 1985, it appearing to the Court that this matter has been compromised and settled, this case is herewith dismissed with prejudice to the refiling of a future action.

(Signed) H. Dale Cook
United States District Judge

RCH/sl
OBA #4343
2-6-85

Entered

FILED

FEB 26 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GUY BALDWIN and wife, SUE ANN BALDWIN,

Plaintiffs,

vs.

CESSNA AIRCRAFT COMPANY,

Defendant.

NO. 84-C-878-C

ORDER OF DISMISSAL WITHOUT PREJUDICE

The above matter coming on for consideration on this 26th day of February, 1985, upon the Joint Application for Dismissal Without Prejudice filed herein by the parties hereto, and the Court being fully advised in the premises, finds that said Application for Dismissal Without Prejudice is in the best interest of justice and should be approved, and the above styled and numbered cause of action be dismissed without prejudice.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Joint Application for Dismissal Without Prejudice by the parties be, and the same is hereby approved, and the above styled and numbered cause of action and complaint of the plaintiffs is dismissed without prejudice to a refiling as to said defendant, Cessna Aircraft Company.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:

ADAMS PETROLEUM ENTERPRISES CORPORATION,

Debtor.

PATRICK J. MALLOY, III, Trustee,

Plaintiff,

v.

OIL EXPLORATION OF AMERICA, INC.,

Defendant.

No. 84-0012
District Court No. 84-C-905-B

O R D E R

This matter comes before the Court on the motion for leave to appeal a ruling of the United States Bankruptcy Court for the Northern District of Oklahoma filed by Patrick J. Malloy III, Trustee in Bankruptcy for debtor Adams Petrolem Enterprises Corporation. Defendant, Oil Exploration of America, Inc., has objected to the motion. For the reasons set forth below, the motion for leave to appeal is overruled.

The suit in the Bankruptcy Court involves the Trustee's effort to recover monies he alleges are due and owing the debtor corporation under a contract for the sale of oil and gas properties. The Trustee attempted to depose William Fields, an attorney in Tulsa who represented defendant in the negotiation and drafting of the contract. The Trustee contends he sought to interrogate Mr. Fields concerning his understanding of allegedly vague and ambiguous language of the contract. Mr. Fields asserted the attorney-client

privilege and refused to answer the questions. Subsequently, plaintiff filed a motion for order compelling discovery. The motion was heard on November 2, 1984, and the Bankruptcy Court thereafter denied plaintiff's motion. Plaintiff now attempts to appeal the ruling of the Bankruptcy Court pursuant to Rule 8003 of the Rules of Bankruptcy Procedure and 28 U.S.C. §1334(b). Defendant contends the Court should not permit interlocutory appeal of the Bankruptcy Court's ruling because it will not advanced the ultimate termination of the litigation.

The standard for review of interlocutory appeals from the Bankruptcy Court is similar to the standard used by circuit courts in their review of district court rulings. In re Den-Col Cartage & Distribution, Inc., 25 Bank. 645, 646-647 (D.Colo. 1982). Interlocutory appeal of district court decisions is permissible when the district court ruling "involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation."

This Court is of the opinion interlocutory appeal of the discovery ruling is inappropriate, since a decision by this court would not materially advance the ultimate termination of litigation. Therefore, plaintiff's motion for leave to appeal is overruled.

ENTERED this 26th day of February, 1985.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 1985

Jack C. Silver, Clerk
U. S. DISTRICT COURT

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Plaintiff, vs. RICHARD TETER, KENT RUSSELL, NICK NELSON, TERESA DEZORT, MARY KALCICH, LINDA GADELMAN, IRENE MASON, KEITH E. HOUSE, JOHN MALANOWSKI, MIKE LOCKETT, THE WESTERN INSURANCE COMPANIES, and FARMERS INSURANCE COMPANY, INC., Defendants,	)	Case No.: C-84-653-E

ORDER OF DISMISSAL

ON This 16th day of February, 1985, upon the written application of the parties, Linda Gadelman and The Western Insurance Companies for a Dismissal with Prejudice of the Complaint and all causes of action between said parties, the Court having examined the said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

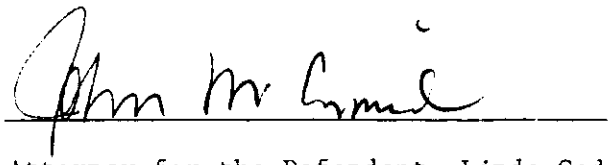
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that all causes of action between Linda Gadelman and The Western Insurance Companies filed herein shall be and the same are dismissed with prejudice to any future action.

S/ THOMAS R. BRETT

JUDGE, DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OKLAHOMA

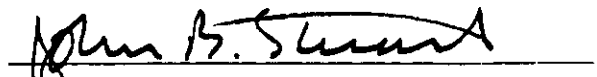
APPROVALS:

JOHN McCORMICK



Attorney for the Defendant, Linda Gadelman

JOHN B. STUART



Attorney for the Defendant, The Western Ins. Cos.

RDW/st

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

L. G., A Minor, by her legally appointed Guardians, L. R. G. and L. M. G., in their own behalf as parents and legal guardians of L. G.,

Plaintiffs,

vs.

BRUCE EDWARD DoREMUS and INDEPENDENT SCHOOL DISTRICT NO. 1 OF TULSA COUNTY, OKLAHOMA,

Defendants.

No. 84-C-276-C

FILED
IN OPEN COURT

FEB 26 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL

ON this 26th day of February, 1985, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action therein, the Court having examined said Application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, approves said settlement and finds that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiffs filed herein against the Defendants be and the same hereby is dismissed with prejudice to any future action, that for good cause shown the Clerk of this Court is ordered to seal the record herein until further Order of this Court.

H. DALE COOK, JUDGE OF THE UNITED STATES DISTRICT COURT

18

THOMAS E. SALISBURY

Attorney for Plaintiffs

RICHARD D. WAGNER

Attorney for Independent School District No. 1

PAUL V. McGIVERN, Jr.

by

Attorney for Bruce Edward DoRemus

RDW/st

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

D. R. and V. R., Individually and as Parents, Next Friend and Guardians of K. A. R., a Minor Child,

Plaintiffs,

vs.

BRUCE EDWARD DoREMUS and INDEPENDENT SCHOOL DISTRICT NO. 1 OF TULSA COUNTY, OKLAHOMA, a/k/a TULSA PUBLIC SCHOOLS,

Defendants.

No. 84-C-210-C

FILED
IN OPEN COURT

FEB 26 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL

ON this 26th day of February, 1985, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action therein, the Court having examined said Application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, approves said settlement and finds that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiffs filed herein against the Defendants be and the same hereby is dismissed with prejudice to any future action, that for good cause shown the Clerk of this Court is ordered to seal the record herein until further Order of this Court.

H. DALE COOK, JUDGE OF THE UNITED STATES DISTRICT COURT

26.

D. GREGORY BLEDSOE

Attorney for Plaintiffs

RICHARD D. WAGNER

Attorney for Independent School District No. 1

PAUL V. McGIVERN, Jr.

by

Attorney for Bruce Edward DoRemus

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Dorothy Knupp, as Personal Representative of the Estate of Jack W. Knupp, Deceased, Plaintiff,	)	
vs.	)	Case No. 85-C-152 E
Sunbelt Systems Transport, Inc.; United States Fire Insurance Co.; and Robert C. Schmull, Defendants.	)	

NOTICE OF DISMISSAL

TO: Sunbelt Systems Transport, Inc.
c/o Mr. Herman Hodges, Chairman
1256 Laquinta Dr.
Orlando, Florida

United States Fire Insurance Co.
c/o Gerald Grimes, Insurance Commissioner
408 Will Rogers Memorial Office Bldg.
Oklahoma City, Oklahoma 73105

Robert C. Schmuhl
5002 W. Wonder Lake Rd.
Wonder Lake, Illinois 60097

Please take notice that the above-entitled action is hereby dismissed without prejudice, said cause to be re-filed in the United States District Court for the Eastern District of Oklahoma.

Dated this 25th day of February, 1985.

Dorothy Knupp, as Personal Representative of the Estate of Jack W. Knupp, Deceased, Plaintiff,

By: Albert R. Matthews

Albert R. Matthews
BONDS, MATTHEWS, BONDS, HAYES & MATTHEWS
Attorneys at Law
PO Box 1906
Muskogee, OK 74402-1906
(918) 683-2911

Bonds, Matthews, Bonds, Hayes & Matthews
Attorneys and Counselors At Law
444 Court Street – P.O. Box 1906
Muskogee, Oklahoma 74402-1906
(918) 683-2911

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JIMMY DALE BLANKENSHIP, Plaintiff,	)	
v.	)	No. 84-C-579-B
DEQUEEN AND EASTERN RAILROAD COMPANY, Defendant.	)	

ORDER OF DISMISSAL WITH PREJUDICE

NOW, on this 26th day of February, 1985, this matter comes on for hearing pursuant to the Stipulation for Dismissal With Prejudice filed on behalf of both parties herein. For good cause shown, it is hereby

ORDERED, ADJUDGED, and DECREED, that this matter be and is hereby DISMISSED WITH PREJUDICE to the filing of any future actions, by reason of the fact that all issues have been settled by and between the parties.

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

A.F.L. FALCK, S.p.A.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
FOUR-EM ENTERPRISES and E. H. McKEE,	)	
	)	
Defendants.	)	No. 85-C-7-B

JUDGMENT ENTERED PURSUANT TO
OFFER TO ALLOW JUDGMENT TO BE TAKEN

Pursuant to Rule 68, Federal Rules of Civil Procedure, the Defendants herein have offered to have judgment taken against them, and the Plaintiff has accepted that offer, and the parties have stipulated to the precise terms of the Judgment which follows.

NOW, on this 26th day of February, 1985, by virtue of the authority vested in me by Rule 68, Federal Rules of Civil Procedure, I, the undersigned United States Court Clerk for the Northern District of Oklahoma do hereby enter judgment on the following terms:

Judgment shall be, and hereby is, rendered against Defendants Four-Em Enterprises, Inc., and E. H. McKee, jointly and severally, in the amaunt of $5,000.00 in principal, with $1,053.00 in interest on said principal amount, with interest accruing hereafter at the rate of ten percent (10%) per annum

until judgment is satisfied, together with $1,500.00 in costs and attorneys' fees. Judgment is expressly reserved solely as to that portion of Plaintiff's action which may arise or may have arisen by virtue of the phrase, which appears in a contract between the parties dated April 13, 1983, which provides, "final payment of 20,000.00 U. S. dollars to be made by February 29, 1984, (this last payment contingent upon Four-Em Enterprises receiving this last payment from its clients)."

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED AS TO
FORM AND CONTENT:

HALL, ESTILL, HARDWICK, GABLE,
COLLINGSWORTH & NELSON, INC.

By Orval E. Jones

Donald L. Kahl
Orval E. Jones
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

ATTORNEYS FOR A.F.L. FALCK, S.p.A.

HOUSTON AND KLEIN

By Thomas H. Trower

Thomas H. Trower
3200 University Tower
1722 South Carson
P. O. Box 2967
Tulsa, Oklahoma 74101
(918) 588-2131

ATTORNEYS FOR FOUR-EM ENTERPRISES
AND E. H. McKEE

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 25 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IRENE MASON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 84-C-893-E
	)	
DEBRA GALLUP,	)	
	)	
Defendant.	)	

ORDER OF DISMISSAL

Now on this 25th day of February, 1985, it appearing to the Court that this matter has been compromised and settled, this case is herewith dismissed with prejudice to the refiling of a future action.

S/ JAMES O. ELLISON

United States District Judge

Civ 31
Rev. 12/81

JUDGMENT ON JURY VERDICT ON LIABILITY ISSUE

United States District Court FOR THE NORTHERN DISTRICT OF OKLAHOMA

DENNIS A. SKINNER

CIVIL ACTION FILE NO. 82-C-1118-C

vs.

TOTAL PETROLEUM, INC.

This action came on for trial before the Court and a jury, Honorable H. DALE COOK, United States District Judge, presiding.

The issues having been duly tried and the jury having duly rendered its verdict, it is ordered and adjudged

That judgment be entered in favor of the plaintiff, Dennis A. Skinner, and against the defendant, Total Petroleum, Inc., for actual or nominal damages in the amount of $3,945.48. That the plaintiff take nothing on his claim for punitive damages.

FILED

FEB 25 1985

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Dated at Tulsa, Oklahoma, this 25th day of February, 19 85.

Jack C. Silver
Clerk of Court

85

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 22 1985

Jack C. Silver, Clerk
U. S. DISTRICT COURT

DEBRA LYNN BEAVER,

Plaintiff,

vs.

LESTER ALAN SHREFFLER, and MESCO METAL BUILDING CORPORATION, a foreign corporation,

Defendants.

Case No.: 84-C-354-C

ORDER OF DISMISSAL

ON This 22nd day of February, 1985, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

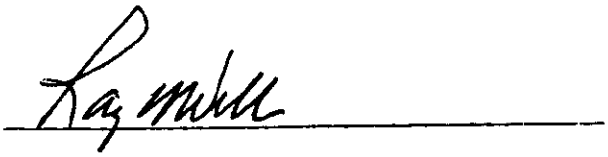
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiff filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.

(Signed) H. Dale Cook

JUDGE, DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OKLAHOMA

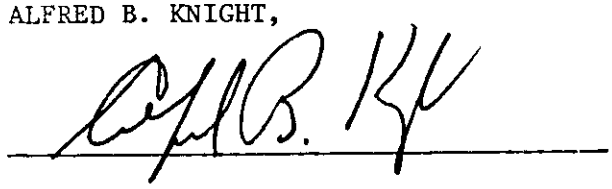
APPROVAL:

RAY H. WILBURN,



Attorney for the Plaintiff,

ALFRED B. KNIGHT,



Attorney for the Defendants.

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 22 1985

Jack C. Silver, Clerk
U. S. DISTRICT COURT

BETTY MEIXNER, Individually and as Personal Representative of the Heirs and Estate of KARL MEIXNER, Deceased,

Plaintiff,

-vs-

A C & S, INC., et al

Defendants.

No. 84-C-911-E

ORDER SUBSTITUTING GARLOCK, INC. AS DEFENDANT AND DISMISSAL OF COLT INDUSTRIES, INC.

Upon the agreement of the affected parties at status conference conducted February 14, 1985, that Garlock, Inc. should be substituted as party-defendant for Colt Industries, Inc. and that Colt Industries, Inc. should be dismissed, IT IS ORDERED that Garlock, Inc. should be and hereby is joined as party-defendant without necessity of further process; that Colt Industries, Inc. should be and hereby is dismissed without prejudice as a party to the instant proceedings; and that Garlock, Inc. should be and hereby is granted ten (10) days within which to answer plaintiff's Complaint.

DONE this 21st day of February, 1985.

S/ JAMES O. ELLISON

JAMES O. ELLISON, JUDGE

Order Prepared by:

Manville T. Buford

MANVILLE T. BUFORD
ATTORNEY FOR COLT INDUSTRIES, INC.
and GARLOCK, INC.
2909 N.W. 31st Street
Oklahoma City, Oklahoma 73112
(405) 947-2909

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

CITY INSURANCE COMPANY, Plaintiff, vs. OKLAHOMA DRILLING CORPORATION, FLUOR SUPPLY COMPANY, WACHOB INDUSTRIES, INC., and SUNBURST ENERGY, INC., Defendants, AND CITY INSURANCE COMPANY, Plaintiff, vs. CLYDE PETROLEUM,INC., an Oklahoma orporation, THAMES OKLAHOMA NUMBER TWO, INC., a foreign corporation, SAPPHIRE EXPLORATION AND PRODUCTION, INC., a foreign corporation, and LEVEN OIL LIMITED, a foreign corporation domesticated in Oklahoma, WACHOB INDUSTRIES, INCORPORATED, an Oklahoma corporation, RELIANCE CASING CORPORATION, an Oklahoma corporation) HALLIBURTON COMPANY, a Delaware corporation, d/b/a Halliburton Services, Defendants.	)	No. 84-C-404-E 84-C-405-E CONSOLIDATED

ORDER OF DISMISSAL WITH PREJUDGE
AS TO CASE NO. 84-C-404-E

WHEREAS, all parties to Case No. 84-C-404-E have stipulated that all issues existing between them have been fully disposed of and have requested the Court to enter an Order of

Dismissal with Prejudge as to the defendants and each of them:

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED BY THE COURT that cause No. 84-C-404-E should be and the same is hereby dismissed as to all defendants in said cause.

Dated this 23rd day of February, 1985.

U. S. DISTRICT JUDGE

Eugene Robinson
Paul V. McGivern, Jr.
Attorneys for Plaintiff
Legal Arts Building
1515 South Boulder
Tulsa, OK 74119

Richard Honn
117 East 5th
Tulsa, OK 74103

Richard Carpenter
Sanders & Carpenter
205 Denver Building
Tulsa, Oklahoma 74119

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ROBERT W. GOUDEAU and WANDA LUE GOUDEAU,	)	
	)	
	)	
Defendants.	)	CIVIL ACTION NO. 85-C-18-E

AGREED JUDGMENT

This matter comes on for consideration this 21 day of Feb., 1985, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, Robert W. Goudeau, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, Robert W. Goudeau, was served with Summons and Complaint. The Defendant has not filed his Answer but in lieu thereof has agreed that he is indebted to the Plaintiff in the amount alleged in the Complaint and that judgment may accordingly be entered against him in the amount of $2,163.87, plus accrued interest of $1,044.48 as of August 31, 1983, plus interest thereafter at the rate of 4 percent per annum until judgment, plus interest thereafter at the legal rate from the date of judgment until paid, plus costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Robert W. Goudeau, in the amount of $2,163.87, plus accrued interest of $1,044.48 as of August 31, 1983, plus interest thereafter at the rate of 4 percent per annum until judgment, plus interest thereafter at the current legal rate of 9.17 percent from the date of judgment until paid, plus costs of this action.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

Nancy Nesbitt Blevins
NANCY NESBITT BLEVINS
Assistant U.S. Attorney

Robert W Goudeau
ROBERT W. GOUDEAU

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DONALD LEE WARREN AND MARY WARREN, husband and wife,	)	
Plaintiffs,	)	
vs.	)	No. 84-C-920-E
CECIL W. PATRICK, et al.,	)	
Defendants,	)	

O R D E R

There being no written response to the motion of Defendant Cecil W. Patrick to dismiss and more than ten (10) days having passed since the filing of the same and no extension of time having been sought by Plaintiffs and Plaintiffs joining orally in the motion at the initial status conference held February 14, 1985, the Court, pursuant to Local Rule 14(a), as amended effective March 1, 1981, concludes that Plaintiffs have therefore waived any objection or opposition to the motion of Defendant Cecil W. Patrick to dismiss. See Woods Constr. Co. v. Atlas Chemical Indus., Inc., 337 F.2d 888, 890 (10th Cir. 1964).

The motion of Defendant Cecil W. Patrick to dismiss is therefore granted.

DATED this 21ST day of February, 1985.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

FILED
FEB 21 1985
Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ROGER D. GOINS,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 84-C-991-B

DEFAULT JUDGMENT

This matter comes on for consideration this 20th day of February, 1985, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through James E. Pohl - Special, Assistant United States Attorney, and the Defendant, Roger D. Goins, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Roger D. Goins, acknowledged receipt of Summons and Complaint on January 2, 1985. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Roger D. Goins, for the principal sum of $1,806.94, plus accrued interest of $345.89 as of October 25, 1984, and administrative costs of $17.39, plus interest thereafter at the current legal rate of

9.17 percent per annum until paid, plus the costs of this action.

S/ THOMAS R [illegible]

UNITED STATES DISTRICT JUDGE

Entered

FILED
FEB 22 1985
Jack C. Silver, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MARY KALCICH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 84-C-571-B
	)	
DEBRA GALLUP,	)	
	)	
Defendant,	)	
	)	
and	)	
	)	
FARMERS INSURANCE COMPANY,	)	
	)	
Intervenor.	)	

ORDER OF DISMISSAL

Now on this 20 day of February, 1985, it appearing to the Court that this matter has been compromised and settled, this case is herewith dismissed with prejudice to the refiling of a future action.

S/ THOMAS R. BRETT

United States District Judge

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 28 1985

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
EDWARD C. SHEPPARD,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 84-C-524-CB

ORDER OF DISMISSAL

Now on this 28th day of February, 1985, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve Edward C. Sheppard have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Edward C. Sheppard, be and is dismissed without prejudice.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 21 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
EDNA M. COPELAND,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 84-C-1027-E

AGREED JUDGMENT

This matter comes on for consideration this 20th day of February, 1984, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through James E. Pohl, Assistant United States Attorney, and the Defendant, Edna M. Copeland, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that Defendant, Edna M. Copeland, was served with Summons and Complaint on January 4, 1985. The Defendant has not filed her Answer but in lieu thereof has agreed that she is indebted to the Plaintiff in the amount of $1,195.00, plus the accrued interest of $778.82 as of December 7, 1984, plus interest thereafter at the rate of 7 percent per annum until the date of this Judgment, plus interest at the legal rate from the date of this Judgment until paid.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover Judgment against the Defendant, Edna M. Copeland, for the principal sum of $1,195.00, plus the accrued interest of $778.82 as of December 7, 1984 plus interest

at 7 percent per annum until the date of this Judgment, plus interest at the legal rate from the date of this Judgment until paid.

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

JAMES E. POHL
Assistant U.S. Attorney

EDNA M. COPELAND

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
vs.	)	
CLARENCE J. HOTFELT,	)	
Defendant.	)	CIVIL ACTION NO. 84-C-996-B

DEFAULT JUDGMENT

This matter comes on for consideration this 20th day of February, 1985, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Clarence J. Hotfelt, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Clarence J. Hotfelt, acknowledged receipt of Summons and Complaint. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Clarence J. Hotfelt, for the principal sum of $6,115.34, plus accrued interest of $777.09 as of July 8, 1984, plus administrative costs of $14.09, plus interest thereafter at the rate of 15.05 percent

per annum until judgment, plus interest thereafter at the current legal rate of 9.17 percent per annum from date of judgment until paid, plus the costs of this action.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

Entered
12510

FILED

FEB 21 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DR. C. E. ANDERSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 84-C-138-B
	)	
ACADEMY LIFE INSURANCE CO.,	)	
	)	
Defendant.	)	

STIPULATION OF DISMISSAL WITH PREJUDICE

COMES now the parties, Dr. C. E. Anderson, plaintiff, by and through his attorneys of record, Bagley, Stutman & Carpenter by David A. Carpenter and Academy Life Insurance Company, defendant by and through its attorneys of record, McGivern, Scott, Gilliard & McGivern by Michael D. Gilliard and do hereby stipulate that the above styled and numbered cause filed by the plaintiff herein shall be dismissed WITH PREJUDICE pursuant to Rule 41 (a)(1) of the Federal Rules of Civil Procedure.

So stipulated this 12 day of February, 1985.

BAGLEY, STUTMAN & CARPENTER

By David A. Carpenter

David A. Carpenter
Attorneys for Plaintiff
2409 East Skelly Drive
Suite 102
Tulsa, OK 74105
(918)745-2447

MCGIVERN, SCOTT, GILLIARD
& MCGIVERN

By _____
Michael D. Gilliard
Attorney for Defendant
Legal Arts Building
1515 S. Boulder
Tulsa, OK 74119
(918) 584-3391

~ Entitled

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 21 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

RHONDA G. DOSSEY, and JERRY B. DOSSEY,

Plaintiffs,

vs.

No. 83-C-893-E

DONALD E. SOUTHERN, M.D.; ASSOCIATES IN PLASTIC & RECONSTRUCTIVE SURGERY, INC., an Oklahoma Corporation; and RICHARD F. CARVER, M.D.,

Defendants.

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON this 21 day of Feb, 1985, the Court having reviewed the Stipulation For Order Of Dismissal With Prejudice, finds that said application should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above styled and numbered cause of action is hereby dismissed with prejudice to the refiling of same.

S/ JAMES O. ELLISON
United States District Judge

APPROVED AS TO FORM AND CONTENT:

James E. Frasier
Attorney for Plaintiffs

Michael P. Atkinson
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MID-STATES AIRCRAFT ENGINES, INC.,	)	
Plaintiff,	)	
vs.	)	No. 84-C-394-E
AIRCRAFT CENTER OF LOS ANGELES, INC.,	)	
Defendant.	)	

JUDGMENT

This action came on for non-jury trial before the Court, Honorable James O. Ellison, District Judge, presiding on December 3, 1984 and counsel for Defendant stated he has been unable to locate Defendant and that all mail has been returned and that Defendant is therefore in default.

IT IS THEREFORE ORDERED AND ADJUDGED that the Plaintiff Mid-States Aircraft Engines, Inc. recover of the Defendant Aircraft Center of Los Angeles, Inc. the sum of $25,753.61, with interest thereon at the rate of 9.17 per cent as provided by law, and his costs of action.

DATED at Tulsa, Oklahoma this 21ST day of February, 1985.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TOTAL PETROLEUM, INC.,
a Michigan corporation,

Plaintiff,

v.

JANET K. THOMPSON,
an individual,

Defendant.

No. 84-C-381E

FILED

FEB 21 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

On the foregoing Stipulation of Dismissal with Prejudice entered into between Plaintiff Total Petroleum, Inc., by and through its attorney Laurence L. Pinkerton of Conner and Winters, and Janet K. Thompson, by and through her attorney William R. Grimm of Barrow, Gaddis, Griffith and Grimm;

IT IS HEREBY ORDERED that the above styled action of Plaintiff be and hereby is dismissed with prejudice to all parties.

ORDERED this 21st day of February, 1985.

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DORTHALENE WILLIAMS,)
)
Petitioner,)
)
vs.) No. 84-C-54-E
)
TED LOGAN, et al.,)
)
Respondents.)

O R D E R

NOW on this 21st day of February, 1985 comes on for hearing the above styled case and the Court, being fully advised in the premises finds as follows:

Petitioner was convicted by jury in Delaware County District Court in Case No. CRF-81-63 of Murder in the first degree and was sentenced to life imprisonment. Motion for New Trial was filed and overruled on January 13, 1982. The conviction was then appealed to the Oklahoma State Court of Criminal Appeals in case number F-82-335 and the Court, in a divided opinion, upheld same based upon the following grounds:

1. The jury instructions in their totality accurately reflect applicable law;
2. There was sufficient evidence for the instruction on first degree murder to be given;
3. The fact that evidence of victim's prior assaults and character was prohibited is not grounds for reversal because:
   a. This was not preserved in Motion for New Trial; and

no instructions were objected to or requested;

b. There was ample evidence given to make the jury aware of victim's violent propensities.

Petitioner next filed writ of habeas corpus with this Court urging the same basic arguments as were raised before the Oklahoma State Court of Criminal Appeals.

First, Petitioner urges error on the part of the trial Court in failing to properly allocate the burden of proof in instructions to the jury. As a second ground, she urges there was insufficient evidence presented to support instructions on first degree murder. Thirdly, she asserts the trial court committed fundamental error in instructions by failing to define the element of "unlawfully" in its instructions on first degree murder. Next, Petitioner alleges the state failed to prove "malice aforethought" beyond a reasonable doubt, thereby depriving appellant of her right to due process and finally, Petitioner claims the court erred in prohibiting evidence of prior assaults on Meda Lively of which Petitioner was aware and in failing to instruct on how the jury should treat evidence of the victim's character.

In response to Petitioner's assertions Defendant states "Petitioner is procedurally barred from raising erroneous jury instructions at this time because no objections were made at trial; that the evidence at trial was sufficient to justify a rational trier of fact to find guilt beyond a reasonable doubt; and that allegations concerning admissibility of evidence in state court are not cognizable in federal habeas corpus

petitions.

The Court has carefully and painstakingly reviewed this case. It is one of great human tragedy and Petitioner shows great remorse for the acts which have brought her before this forum. Additionally, the Court has received a flurry of letters from those concerned for Petitioner's situation and at one point the Court received a "Petition for Community Reinstatement" which reflects a great deal of community support and sympathy for Petitioner.

The Oklahoma State Court of Criminal Appeals ultimately rejected Petitioner's argument that the failure to instruct on self defense improperly allocated the burden of proof because the same was not preserved for appeal by motion for new trial, basing its holding on Stevenson v. State, 637 P.2d 878 (Okl.Cr. 1981) which states:

> Only those questions which were raised in the trial court, and on which adverse rulings were made and which were then incorporated in the Motion for New Trial and assigned as error in the petition, will be considered on appeal. Logan v. State, 493 P.2d 842 (Okl.Cr. 1972); Pierce v. State, 491 P.2d 335 (Okl.Cr. 1971).

Petitioner relies on Townsley v. State, 355 P.2d 420 (Okl.Cr. 1960) to refute this argument. In the dissenting opinion in the State Court of Criminal Appeals, Judge Brett cited Townsley along with other cases, stating the Court's instructions as given did not provide the jury with a proper theory of self defense which is fundamental. This Court does not agree.

In reviewing the record as a whole, the Court does not find the instructions failed to provide the jury with applicable

for writ of habeas corpus be and is hereby denied.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

R. L. CLARK DRILLING CONTRACTOR, INC.,

Plaintiff,

vs.

SCHRAMM, INC., a Pennsylvania Corporation,

Defendant and Third Party Plaintiff,

AND

AEROQUIP CORPORATION, a Michigan Corporation,

Additional Defendant,

vs.

F. B. WRIGHT COMPANY, a Corporation,

Third Party Defendant,

AND

PHILADELPHIA F. B. WRIGHT DISTRIBUTION COMPANY, a Pennsylvania Corporation,

Additional Third Party Defendant.

No. 83-C-720-C

ORDER

Upon joint stipulation between plaintiff and defendant for dismissal with prejudice of the plaintiff's complaint against

defendant and defendant's third party complaints against third party defendants, it is hereby ordered that plaintiff's complaint against defendant and defendant's third party complaints against the third party defendants are hereby dismissed with prejudice to the bringing of another action for the same, each party to pay its own cost.

ORDERED this 21st day of January, 1985.

(Signed) H. Dale Cook

H. DALE COOK, Judge
UNITED STATES DISTRICT COURT

ROGERS, HONN & ASSOCIATES, INC.

By Richard C. Honn
Richard C. Honn
Attorneys for R. L. Clark
Drilling Contractor, Inc.

JONES, GIVENS, GOTCHER, DOYLE & BOGAN, INC.

By Alfred K. Morlan
Alfred K. Morlan
Attorneys for Schramm, Inc.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 21 1985

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
RICHARD E. PAUL,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 83-C-661-C

O R D E R

Good cause having been shown, it is hereby ORDERED, ADJUDGED AND DECREED that the above-referenced action is hereby dismissed without prejudice.

Dated this 21 day of February, 1985.

(Signed) H. Dale Cook
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 21 1985

Jack C. Silver, Clerk
U. S. DISTRICT COURT

HOLD OIL CORPORATION, a Florida corporation, et al.	)	
Plaintiffs,	)	
vs.	)	Case No. 83-C-731-C
ARKLA EQUIPMENT COMPANY, a division of Arkla Industries, Inc.,	)	
Defendant.	)	

ORDER

NOW, on this 21st day of February, 1985, the Joint Application for Order of Dismissal with Prejudice came on before this Court for hearing. The Court finds that the parties have settled the issues in dispute and that the case should be dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiffs' claims against the defendant are hereby dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant's counterclaims against the plaintiffs are hereby dismissed with prejudice.

(Signed) H. Dale Cook
Judge of the District Court

APPROVED AS TO FORM:

Ira L. Edwards, Jr.
ATTORNEY FOR PLAINTIFFS

William D. Curlee
ATTORNEY FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Entered

FILED

FEB 21 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

SUN REFINING AND MARKETING CO.,
27th Floor
Ten Penn Center Plaza
1801 Market Street
Philadelphia, PA. 19103,

Plaintiff,

v.

THE EXCHANGE BANK
Skiatook, Oklahoma 74070,

Defendant and
Third Party Plaintiff,

v.

L. PATRICK MURRAY,

Third Party Defendant.

No. 83-C-571-B

AMENDED JUDGMENT

In keeping with the verdict of the jury duly rendered herein on Monday, July 30, 1984, on Verdict Form No. 1, and the letter from plaintiff's counsel of February 15, 1985, agreeing to the remittitur of punitive damages as set forth in the Court's order of February 1, 1985, IT IS HEREBY ADJUDGED the plaintiff, Sun Refining and Marketing Co., is to have judgment against the defendant, The Exchange Bank, Skiatook, Oklahoma, for actual damages in the sum of $500,000.00 with prejudgment interest thereon at the rate of 6% per annum from June 27, 1983, until this date, July 31, 1984, post-judgment interest from July 31, 1984, in the amount of 12.17%, plus the costs of this action; IT IS FURTHER ORDERED the plaintiff, Sun Refining and Marketing Co., is granted judgment for punitive damages against the defendant, The Exchange Bank, Skiatook, Oklahoma, in the amount of $75,000.00, with post-judgment interest thereon at the rate of 12.17% from July 31, 1984;

AND IT IS FURTHER ORDERED AND ADJUDGED, pursuant to the verdict of the jury on Verdict Form No. 4 in favor of the third party defendant, L. Patrick Murray, and against the third party plaintiff, The Exchange Bank, Skiatook, Oklahoma, that the defendant L. Patrick Murray is to have judgment against the third party plaintiff thereon. The Exchange Bank, Skiatook, Oklahoma, is to take nothing against the said third party defendant, L. Patrick Murray, and the third party defendant is to have his costs thereon.

DATED this 21st day of February, 1985.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATE DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Plaintiff, v. RICHARD TETER, KEN RUSSELL, NICK NELSON, TERESA DEZORT, MARY KALCICH, LINDA GADELMAN, IRENE MASON, KEITH E. HOUSE, JOHN MALANOWSKI, MIKE LOCKETT, THE WESTERN INSURANCE COMPANIES, AND FARMERS INSURANCE COMPANY, INC., Defendants.	)	No. 84-C-653-E

FILED
1985
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL

Now on this 20 day of February, 1985, it appearing to the Court that this matter has been compromised and settled, this case is herewith dismissed with prejudice to the refiling of a future action.

S/ THOMAS R. BRETT

United States District Judge

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JEANNIE DAWN OLINGHOUSE, Plaintiff, vs. GLOBE SLICING MACHINE COMPANY, INC., a Connecticut corporation, Defendant.	)	No. 83-C-626-B

ORDER OF DISMISSAL WITH PREJUDICE

Upon Application by the parties, and for good cause shown, the Court finds that the above-styled and numbered cause of action should be dismissed with prejudice to refiling in the future.

IT IS SO ORDERED this 20 day of February, 1985.

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 20 1985

Entered

Jack C. Silver, Clerk
U. S. DISTRICT COURT

R.H. ENERGY, LTD., II, a joint venture, et al.,	)	
Plaintiffs,	)	
v.	)	No. 81-C-254-B
A.B. STILL, A.B. STILL WEL-SERVICE, INC.,	)	
Defendants.	)	

JUDGMENT

In keeping with the Court's order entered this date, judgment is hereby entered releasing the surety bond given by plaintiff R.H. Energy, Ltd., II, in connection with plaintiff's fourth claim for relief.

ENTERED this 20th day of February, 1985.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

158

Entered

FEB 20 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

R.H. ENERGY, LTD., II, a joint venture, et al.,	)	
Plaintiffs,	)	
v.	)	No. 81-C-254-B
A. B. STILL, A. B. STILL WEL-SERVICE, INC.,	)	
Defendants.	)	

ORDER

This matter comes before the Court on plaintiff R.H. Energy, Ltd. II's motion for dismissal of claims and for judgment releasing surety bond without taxation of costs or fees, filed September 14, 1984; motion for sanctions, filed September 14, 1984; and motion for summary judgment on defendant's counterclaim, filed September 17, 1984. The Court has granted defendants three separate extensions of time to respond to plaintiff's motions. The latest response date was February 8, 1985. Defendants have failed to respond to the motions. Therefore, pursuant to Rule 14(a) of the Local Rules of the Northern District of Oklahoma, the Court deems the matters urged in plaintiff's motions to be confessed by defendants, and rules as follows on the motions:

1) Plaintiff's motion for dismissal of plaintiff's first, second and fourth claims for relief is hereby sustained. Plaintiff's first, second and fourth claims for relief are dismissed without prejudice, and judgment shall issue this date

157

releasing the surety bond given in connection with plaintiff's fourth claim for relief, without taxation of costs or fees.

2) Plaintiff's motion for sanctions against defendants, pursuant to F.R.Civ.P. 11, is overruled. The Court does not find, based upon a review of the record, the defendant's motion to amend counterclaim was made in bad faith or for the purpose of harassment. Therefore, sanctions are inappropriate.

3) Plaintiff has filed a motion for summary judgment on defendants' counterclaim for property damage. Defendants allege in their counterclaim the plaintiff deliberately entered defendants' property and caused permanent surface damage thereto. Deeming as confessed plaintiffs' assertion it had only an overriding royalty interest in the property and was not the lessee, the Court finds plaintiff cannot be held liable for surface damages to defendant. Since no material issue of fact remains concerning the question of liability, the Court finds plaintiff's motion for summary judgment should be sustained. See, Bruce v. Martin-Marietta, 544 F.2d 442, 445 (10th Cir. 1974) and Ando v. Great Western Sugar Co., 475 F.2d 531, 535 (10th Cir. 1973).

ENTERED this 20th day of February, 1985.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 20 1985

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O'BYRNE ELECTRIC CO., a Missouri corporation,	)	
Plaintiff,	)	
vs.	)	No. 82-C-12-E
KAMO ELECTRIC COOPERATIVE, INC., an Oklahoma Electric Cooperative,	)	
Defendant.	)	

JUDGMENT DISMISSING ACTION BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown within forty-five (45) days that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

DATED this 19th day of February, 1985.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DAVID W. JONES, Plaintiff,	)	
vs.	)	No. 84-C-1008-C
BLUE CIRCLE, INC., Defendant.	)	

ORDER

Now on this 20th day of February, 1985, the above captioned matter comes on for hearing before the undersigned District Judge on the plaintiff's motion to dismiss this action with prejudice to the bringing of any future action.

After being advised in the premises, the court finds that this motion should be granted.

IT IS THEREFORE ORDERED that this action be dismissed with prejudice to the bringing of any future action.

(Signed) H. Dale Cook
UNITED STATES DISTRICT JUDGE

APPROVED:

BEN A. GOFF
Attorney for the Plaintiff

Joel H. Kaplan / by J. L. Morris
JOEL H. KAPLAN
Attorney for the Defendant

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 20 1985

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
1962 CHEVROLET CORVETTE, VIN 20437N193039.	)	
	)	
Defendant.	)	CIVIL ACTION NO. 83-C-375-E

ORDER OF DISMISSAL

On the 19th day of February, 1985, after consideration of Plaintiff's Motion to Dismiss, and good cause appearing therein,

IT IS ORDERED, ADJUDGED and DECREED that the pending action be dismissed, without cost to any party; that the subject property be disposed of in accordance with the letter agreement attached and incorporated by reference; and that the Plaintiff, United States of America, its agents and employees, be held harmless for any and all damage which may have resulted from the seizure and storage of the property.

S/ JAMES O. ELLISON

JAMES O. ELLISON
United States District Judge

APPROVED AS TO FORM:

GERALD HILSHER
Assistant United States Attorney

DAVID K. ROBERTSON
Attorney for Oklahoma Osteopathic

RONALD MOOK
Attorney for J.D. and Regina Bradshaw

LARRY GULLEKSON
Attorney for David Eugene Bradshaw

DKR/sw
2-11-85/9

OBA #7655

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA Plaintiff, vs. One 1962 Chevrolet Corvette VIN # 20437N193039, Defendant.	)	Civil Action No. 83-C-375-E

LETTER AGREEMENT

In consideration of the payment of SIX THOUSAND FIVE HUNDRED AND NO/100 DOLLARS ($6,500.00), by J. D. Bradshaw and Regina Bradshaw, Oklahoma Osteopathic Hopsital agrees to withdraw its application to intervene in the above styled action.

That J. D. Bradshaw and Regina Bradshaw, through their attorneys, Ronald Mook, will deliver to Oklahoma Osteopathic Hospital through its attorneys, a cashier's check in the sum of SIX THOUSAND FIVE HUNDRED AND NO/100 DOLLARS ($6,500.00), payable to Oklahoma Osteopathic Hospital and that subject to the approval of the Court and the office of the United States Attorney of the Northern District of Oklahoma, the 1962 Chevrolet Corvette VIN #20437N193039, bill be delivered, as is, to J. D. Bradshaw and Regina Bradshaw.

The cashier's check mentioned above will be delivered at the time this agreemeent is approved by the Court.

If you are in agreement with the above statement, please signify that agreement by signing where indicated below.

OSTEOPATHIC HOSPITAL FOUNDERS ASSOCIATION, INC. d/b/a OKLAHOMA OSTEOPATHIC HOSPITAL

BY: _____
DAVID K. ROBERTSON
ROGERS, HONN & ASSOCIATES,

J. D. BRADSHAW and
REGINA BRADSHAW

BY: _____
RONALD MOOK
Attorney at Law

DAVID EUGENE BRADSHAW

BY: _____
LARRY GULLEKSON
Attorney at Law

Entered

FILED

FEB 20 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, v. JOHN W. DILLINGER; SHARON L. DILLINGER; STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION; BANK OF THE LAKES, a/k/a BANK OF THE LAKES, a banking corporation; CHRIS CHOATE; COUNTY TREASURER, Delaware County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Delaware County, Oklahoma, Defendants.	)	CIVIL ACTION NO. 83-C-934-C

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 20th day of February, 1985. The Plaintiff appears by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney; the Defendant, State of Oklahoma, ex rel. Oklahoma Tax Commission, appears by Joe Mark ElKouri, Assistant General Counsel; the Defendant, Bank of the Lakes, a/k/a Bank of the Lakes, a banking corporation, appears by its attorney, Paul E. Blevins; the Defendants Board of County Commissioners, Delaware County, Oklahoma, and County Treasurer, Delaware County, Oklahoma, appear by their attorney, Waldo Bales, Assistant

District Attorney; and the Defendants John W. Dillinger, Sharon L. Dillinger, and Chris Choate, appear not, but make default.

The Court being fully advised and having examined the file herein finds that Defendant, John W. Dillinger was served with Summons, Complaint, and Amended Complaint on September 29, 1984; that Defendant Sharon L. Dillinger was served with Summons, Complaint, and Amended Complaint on December 16, 1984; that Defendant State of Oklahoma, ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Complaint on November 8, 1983, and acknowledged receipt of Summons and Amended Complaint on May 25, 1984; that Defendant Bank of the Lakes, a/k/a Bank of the Lakes, a banking corporation, acknowledged receipt of Summons and Complaint on November 15, 1983, and acknowledged receipt of Summons and Amended Complaint on May 4, 1984; that Defendant Chris Choate was served with Summons and Amended Complaint on May 23, 1984; that Defendant Board of County Commissioners, Delaware County, Oklahoma, acknowledged receipt of Summons and Amended Complaint on April 30, 1984; and that Defendant County Treasurer, Delaware County, Oklahoma, acknowledged receipt of Summons and Amended Complaint on April 19, 1984.

It appears that Defendant State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer and Cross-Petition with regard to the Complaint herein on December 8, 1983, and its Answer and Cross-Petition with regard to the Amended Complaint herein on June 22, 1984; that the Defendant, Bank of the Lakes, a/k/a Bank of the Lakes, a banking corporation, filed its Answer

and Cross-Petition with regard to the Complaint herein on November 17, 1983, and its Answer and Cross-Complaint with regard to the Amended Complaint herein on May 7, 1984; that the Board of County Commissioners, Delaware County, Oklahoma and County Treasurer, Delaware County, Oklahoma, filed their Answer herein on May 3, 1984; and that the Defendants John W. Dillinger, Sharon L. Dillinger, and Chris Choate, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain promissory note and for foreclosure of a mortgage securing said promissory note upon the following described real property located within the Northern Judicial District of Oklahoma:

> Lot 10, Carter's Cabin Sites, according to the recorded plat thereof, Delaware County, Oklahoma.

THAT on July 14, 1978, the Defendants John W. Dillinger and Sharon L. Dillinger executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of $18,200.00, payable in monthly installments with interest thereon at the rate of eight and one-half (8½) percent per annum.

That on April 27, 1981, the Defendants John W. Dillinger and Sharon L. Dillinger executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of

$22,410.27, payable in monthly installments, with interest thereon at the rate of eight and one-half (8½) percent per annum. The debt represented by this promissory note was the reamortized debt represented by the July 14, 1978 promissory note referred to above.

That as security for the payment of the above-described notes, the Defendants John W. Dillinger and Sharon L. Dillinger executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated April 27, 1981, covering the above-described property. Said mortgage was recorded in Book 414, Page 414, in the records of Delaware County, Oklahoma.

The Court further finds that Defendants, John W. Dillinger and Sharon L. Dillinger, made default under the terms of the aforesaid promissory notes and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, John W. Dillinger and Sharon L. Dillinger, are indebted to the Plaintiff in the principal sum of $21,862.69, plus accrued interest in the sum of $692.62 as of June 22, 1983, plus interest thereafter at the rate of $5.0913 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant State of Oklahoma, ex rel. Oklahoma Tax Commission, has a lien on the property which is the subject matter of this action by virtue of

Income Withholding Tax Warrant No. 16030ITW, issued November 6, 1981, and filed of record on November 23, 1981 against John Dillinger Concrete Construction, John Dillinger and Sharon Dillinger, in the principal sum of $477.39, plus penalties and interest accrued and accruing. This lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant Bank of the Lakes, a/k/a Bank of the Lakes, a banking corporation, has a lien on the property which is the subject matter of this action by virtue of a mortgage dated December 11, 1982, and recorded in Book 440, Page 509, in the records of Delaware County, Oklahoma. Said lien is inferior to the interest of the Plaintiff, United States of America.

This mortgage was given as security for payment of a promissory note from Sharon Dillinger dated July 29, 1982, and a promissory note from John Dillinger, dated May 13, 1982.

The Defendants John W. Dillinger, and Sharon L. Dillinger, made default under the terms of such promissory notes and mortgage by reason of their failure to make the installments due thereon, which default has continued, and by reason thereof the Defendants, John W. Dillinger and Sharon L. Dillinger, are indebted to the Defendant Bank of the Lakes, a/k/a Bank of the Lakes, a banking corporation in the sum of $11,567.81 as of May 4, 1984, plus interest thereafter at the rate of $5.86 per day until judgment, plus interest thereafter at the legal rate until

fully paid, plus the sum of $3,572.52 for additional expenses incurred by said Defendant, plus the sum of $2,281.05 as an attorney fee.

The Court further finds that the Defendant, County Treasurer, Delaware County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of $ —0—, plus applicable penalties and interest for the year(s) of _____. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, County Treasurer, Delaware County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of $ —0— which became a lien on the property as of _____, _____. Said lien is inferior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendants, John W. Dillinger and Sharon L. Dillinger, in the principal sum of $21,862.69, plus accrued interest in the sum of $692.62 as of June 22, 1983, plus interest thereafter at the rate of $5.0913 per day, until judgment, plus interest thereafter at the current legal rate of 9.17% percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant Bank of the Lakes, a/k/a Bank of the Lakes, a banking

corporation, have and recover judgment against Defendants John W. Dillinger and Sharon L. Dillinger in the amount of $11,567.81 as of May 4, 1984, plus interest thereafter at the rate of $5.86 per day until judgment, plus interest thereafter at the current legal rate of 9.17% percent per annum until paid, plus the sum of $3,572.52 as additional expenses incurred by said Defendant, plus the sum of $2,281.05 as an attorney fee.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of the Defendants, John W. Dillinger and Sharon L. Dillinger, to satisfy the money judgment of the Plaintiff or the Defendant Bank of the Lakes, a/k/a Bank of the Lakes, a banking corporation, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including costs of the sale of said real property;

Second:

In payment of the Defendant, County Treasurer, Delaware County, Oklahoma, in the amount of $-0-, ad valorem taxes which are presently due and owing on said real property, plus applicable penalties and interest;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff;

Fourth:

In payment of the lien of the Defendant State of Oklahoma, ex rel. Oklahoma Tax Commission, as set forth above;

Fifth:

In payment of the judgment rendered herein in favor of the Defendant Bank of the Lakes, a/k/a Bank of the Lakes, a banking corporation;

Sixth:

In payment of the Defendant, County Treasurer, Delaware County, Oklahoma in the amount of $ -0-, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the

Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

(Signed) H. Dale Cook
UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney

NANCY NESBITT BLEVINS
Assistant United States Attorney

JOE MARK ELKOURI
Assistant General Counsel
Oklahoma Tax Commission

PAUL E. BLEVINS
Attorney for Bank of the Lakes
a/k/a Bank of The Lakes,
a banking corporation

WALDO BALES
Assistant District Attorney
Delaware County, Oklahoma

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CURTIS LEE KENOLY,

Plaintiff,

vs.

PHILLIP ARRON SHEAD, et al.,

Defendant(s).

Case No.: 84-C-584-E

ORDER OF DISMISSAL

ON This 19th day of February 1985, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromised settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

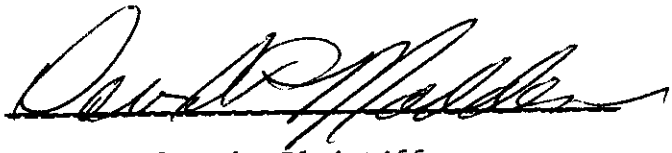
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiff filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.

S/ JAMES O. ELLISON

JUDGE, DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OKLAHOMA

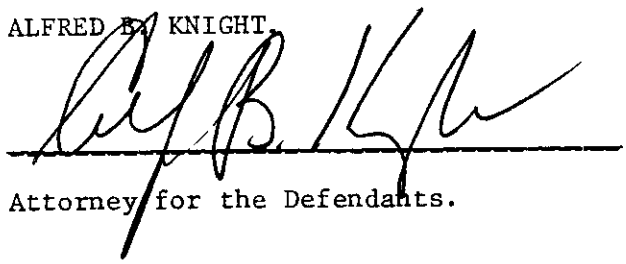
APPROVAL:

DAVID P. MADDEN,



Attorney for the Plaintiff,

ALFRED B. KNIGHT,



Attorney for the Defendants.

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

SHIRLEY KEATON
JAMES ROBERT KEATON

Plaintiffs,

vs.

FARMERS INSURANCE COMPANY
OF AMERICA

JIMMY D. MARSHALL

Defendants.

84-C-493-E

ORDER OF DISMISSAL

Now on this 19th day of February, 1985 the plaintiff's application for dismissal comes before the court for consideration. The court finds that the application should be approved.

It is therefore ordered that the plaintiff's application for dismissal be approved and this action is therefore dismissed without prejudice to later refiling.

Judge of the District Court

JBS/sl

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 20 1985

Jack C. Silver, Clerk
U. S. DISTRICT COURT

FORD MOTOR CREDIT COMPANY, a foreign corporation,

Plaintiff,

vs.

DESMOND WARREN JORDAN, on his behalf and as Representative Underwriter of Those Underwriters Subscribing to Policy No. AS144/5467,

Defendant and Third-Party Plaintiff,

vs.

WINSLOW & ASSOCIATES, INC., an Oklahoma corporation,

Third-Party Defendant and Third-Party Plaintiff,

vs.

GRAHAM ROGERS, INC.

Additional Third-Party Defendant,

vs.

KEVIN R. SHANK,

Additional Third-Party Defendant.

Case No.: 83-C-993-E

O R D E R

NOW ON THIS 19th day of February, 1985 there came before the Court the Application for Dismissal without Prejudice and for good cause shown it is ordered that the Cross Complaint of Winslow & Associates against Graham Rogers, Inc. be dismissed without prejudice reserving any issues concerning attorney fees and costs.

4

S/ JAMES O. ELLISON

U. S. DISTRICT JUDGE

APPROVAL AS TO FORM:

Joseph H. Paulk

John B. Stuart

Entered
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
FILED
JAN 14 1985
PATRICIA D. HOWARD
CLERK OF THE PANEL

DOCKET NO. 486

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE RICHARDSON-MERRELL, INC. "BENDECTIN" PRODUCTS LIABILITY LITIGATION (NO. II)

Johnny N. Gibson, et al. v. Merrell Dow Pharmaceuticals, Inc., et al., N.D. Oklahoma, C.A. No. 84-C-1011-B

FILED
FEB 7 9 31 AM '85
U.S. DIST. COURT
SOUTHERN DIST. OHIO
WEST DIV. CINCINNATI
KENNETH J. MURPHY
CLERK

C-1-85-0387

CONDITIONAL TRANSFER ORDER

On February 9, 1982, the Panel transferred 47 civil actions to the United States District Court for the Southern District of Ohio for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. §1407. Since that time, more than 300 additional civil actions have been transferred to the Southern District of Ohio. With the consent of that court, all such actions have been assigned to the Honorable Carl B. Rubin.

FILED
19 FEB 20
Clerk, U.S. District Court

It appears from the pleadings filed in the above-captioned action that it involves questions of fact which are common to the actions previously transferred to the Southern District of Ohio and assigned to Judge Rubin.

Pursuant to Rule 9 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 89 F.R.D. 273, 278-79, the above-captioned action is hereby transferred under 28 U.S.C. §1407 to the Southern District of Ohio for reasons stated in the order of February 9, 1982, 533 F. Supp. 489, and with the consent of that court assigned to the Honorable Carl B. Rubin.

This order does not become effective until it is filed in the office of the Clerk of the United States District Court for the Southern District of Ohio. The transmittal of this order to said Clerk shall be stayed fifteen days from the entry thereof and if any party files a notice of opposition with the Clerk of the Panel within this fifteen day period, the stay will be continued until further order of the Panel.

Inasmuch as no objection is pending at this time, the stay is lifted and this order becomes effective

JAN 30 1985

Patricia D. Howard
Clerk of the Panel

FOR THE PANEL:

Patricia D. Howard
Clerk of the Panel

THIS IS A TRUE COPY

ATTEST

Patricia D. Howard
Clerk, Judicial Panel on
Multidistrict Litigation

DATE: 2-7-85

Entered

FILED

FEB 19 1985

Jack C. Silver, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

EMMETT SMITH,

Plaintiff,

vs.

LYSTADS, INC.,

Defendant.

No. 84-C-94-E

O R D E R

There being no response to the Defendant's Motion to Dismiss reinstated amended complaint and more than thirty (30) days having passed since the filing of the same and no extension of time having been sought by Plaintiff the Court, pursuant to Local Rule 14(a), as amended effective March 1, 1981, concludes that Plaintiff has therefore waived any objection or opposition to the motion. See Woods Constr. Co. v. Atlas Chemical Indus., Inc., 337 F.2d 888, 890 (10th Cir. 1964).

The Defendant's Motion to Dismiss reinstated amended complaint is therefore granted.

DATED this 19th day of February, 1985.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
STEVEN A. MARTINSON,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 84-C-693-E

ORDER OF DISMISSAL

Now on this 19th day of February, 1985, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve Steven A. Martinson have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Steven A. Martinson, be and is dismissed without prejudice.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
RUSSELL V. GODSEY,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 84-C-940-E

DEFAULT JUDGMENT

This matter comes on for consideration this 19th day of February, 1985, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, Russell V. Godsey, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Russell V. Godsey, acknowledged receipt of Summons and Complaint on December 4, 1984. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Russell V. Godsey, for the principal sum of $1,840.53, plus accrued interest of $305.43 as of September 9, 1984, and administrative costs of $16.06, plus interest thereafter at the current legal rate of

9.17
~~9.09~~ percent per annum until paid, plus the costs of this action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 19 1985

Jack C. Silver, Clerk
U. S. DISTRICT COURT

OFS 1981 MID-YEAR DRILLING PROGRAM and ELLEV DIVERSIFIED DRILLING PROGRAM,	)	
Plaintiffs,	)	
vs.	)	Case No. 84-C-812-E
D-I EXPLORATION and D-I ENERGY, INC.,	)	
Defendants.	)	

NOTICE OF DISMISSAL

COME NOW the Plaintiffs, OFS 1981 Mid-Year Drilling Program and Ellev Diversified Drilling Program, and dismiss the captioned proceeding without prejudice pursuant to Rule 41(a)(1), the Federal Rules of Civil Procedure.

HALL, ESTILL, HARDWICK, GABLE, COLLINGSWORTH & NELSON, INC.

By Thomas M. Ladner

Thomas M. Ladner
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

ATTORNEYS FOR PLAINTIFFS,
OFS 1981 MID-YEAR DRILLING PROGRAM
and ELLEV DIVERSIFIED DRILLING PROGRAM

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18th day of February, 1985, he caused a true and correct copy of the foregoing Notice of Dismissal to be placed in a sealed envelope with postage prepaid, the same being delivered to the United States Post Office addressed to:

Stephen R. Pitcock
Watson & McKenzie
1900 Liberty Tower
Oklahoma City, Oklahoma 73102

Thomas M. Ladner

THOMAS M. LADNER

Entitled

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 15 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
AMZIE CRANSON,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 84-C-572-C

NOTICE OF DISMISSAL

COMES NOW the United States of America by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Nancy Nesbitt Blevins, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 15th day of February, 1985.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

Nancy Nesbitt Blevins

NANCY NESBITT BLEVINS
Assistant United States Attorney
460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 15th day of February, 1985, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Amzie Cranson, c/o Compressor Systems of Tulsa, 4317 S. Harvard, Tulsa, Oklahoma 74135.

Nancy Nesbitt Blevins
Assistant United States Attorney

Entered

FILED

FEB 13 '85

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FORREST ROBINSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 84-C-351-B
	)	
GROUP HEALTH SERVICE OF OKLAHOMA, INC., an Oklahoma Corporation, d/b/a BLUE CROSS AND BLUE SHIELD OF OKLAHOMA,	)	
	)	
Defendant.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
SUSTAINING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

The Court has for consideration Defendant's Motion for Summary Judgment. This is a diversity action in which Plaintiff seeks damages against Group Health Service of Oklahoma, Inc., d/b/a Blue Cross and Blue Shield of Oklahoma, for medical expenses which he claims were due under his contract with Defendant. Plaintiff also seeks compensatory and punitive damages in tort for alleged misconduct and bad faith dealings with the Plaintiff on the part of the Defendant.

In Plaintiff's First Amended Complaint Plaintiff alleges that he is a citizen of the State of Texas; that the Defendant is a corporation organized and existing under the laws of the State of Oklahoma with it principal place of business in the State of Oklahoma; that in February of 1978, he established permanent residence in the State of Oklahoma; that he had lived in Iowa immediately preceding his move to Oklahoma; that he transferred his medical insurance plan, which had been with Blue Cross and Blue Shield of Iowa, to Defendant; that at the time Defendant assumed Plaintiff's medical insurance coverage, Plaintiff was led

by Defendant to believe that Plaintiff's new coverage with Defendant included Major Medical protection and that he was later specifically so advised by letter dated November 27, 1979 from Defendant; that he was not informed that Defendant was denying such coverage until November 10, 1982; that in reliance upon Defendant's specific representations that Plaintiff's policy of insurance with Defendant included major medical protection Plaintiff paid premiums for such coverage and did not seek additional health insurance; that in September of 1981 Plaintiff suffered a heart attack and underwent open heart surgery in October of 1981; that Plaintiff's medical bills for such treatment totaled $21,863.93 and that Defendant has refused to pay $10,097.55 of the balance due on his medical bills.

Plaintiff further alleges that he is entitled to reformation of his insurance agreement to provide for Major Medical coverage in accordance with Plaintiff's intentions and in conformity with Defendant's representations to Plaintiff; that Blue Cross and Blue Shield of Oklahoma and Blue Cross and Blue Shield of Iowa both belong to the Blue Cross and Blue Shield Association and as members of such association have entered into an inter-plan agreement which provides for handling transfers of insurance policies between each other; that Defendant was under a duty to disclose to Plaintiff in a discernible manner the fact that the policy being issued in Oklahoma provided less coverage and specifically did not provide Major Medical coverage and that Plaintiff's policy with Defendant should be construed so as to contain coverage at least equal to that coverage contained in the Iowa policy.

In his second cause of action Plaintiff alleges that because of Defendant's "gross acts of misconduct and bad faith dealings with Plaintiff" in Plaintiff's refusal to pay the amount Plaintiff claims is due under his contract with Defendant, Plaintiff has suffered damages in the sum of $100,000.00 due to emotional distress which has resulted in a worsening and aggravation of his heart condition and that he is entitled to punitive damages in the sum of $250,000.00.

In support of its Motion for Summary Judgment, Defendant contends that Plaintiff never applied for nor had in effect any major medical insurance contract or coverage issued by the Defendant at any time from February 28, 1978 to December 1, 1981, when he had other coverage with Defendant; that Defendant has paid all claims owing to Plaintiff in accordance with the express terms and provisions of its contract with Plaintiff; that Plaintiff's Application of January 1, 1978 for Basic Hospital (Blue Cross), Basic Medical-Surgical (Blue Shield) and Extended Benefits coverages was received by Defendant after it had furnished Plaintiff on or about December 28, 1977 a written description making a full and proper disclosure of the terms, provisions, and benefits of the coverages applied for; that thereafter, upon payment of premiums by the Plaintiff for the described coverages, Defendant placed in effect and issued to Plaintiff on February 28, 1978 the coverages which Plaintiff applied for, and which coverages did not include Major Medical coverage; that Plaintiff's contract with Defendant remained in effect until cancelled by Plaintiff effective on or about December 1, 1981; that from the time of Plaintiff's application

for coverage with Defendant to the date of cancellation by Plaintiff of his agreement with Defendant, Plaintiff had in his possession written information correctly describing his Basic Hospital, Basic Medical-Surgical and Extended Benefits coverages, including a copy of the Non-Group Insurance Contract for such coverages; that neither Plaintiff, nor anyone on Plaintiff's behalf, ever paid any dues, premium or other consideration to Defendant at any time for a Major Medical insurance plan or contract for any such coverage, and that Plaintiff in fact paid premiums only for Basic Hospital, Basic Medical-Surgical and Extended Benefits coverages under his Non-Group contract with Defendant.

In Plaintiff's Response to Defendant's Motion for Summary Judgment he contends that there are genuine issues of material facts and that Defendant's Motion for Summary Judgment must therefore be denied. Plaintiff contends that such disputed facts include: 1. Whether Defendant's Agent-Employee told Plaintiff in a telephone conversation initiated by Plaintiff after he had moved to Oklahoma from Iowa in August or September of 1977, prior to Plaintiff's application for coverage with Defendant, that Defendant did have Major Medical Coverage available for Plaintiff on a non-group basis and that she would send him the appropriate application for such coverage. 2. Whether at the time Plaintiff requested transfer of his membership from Blue Cross and Blue Shield of Iowa to Blue Cross and Blue Shield of Oklahoma, he requested such transfer conditioned upon the Defendant issuing coverage which included Major Medical. 3. Whether Blue Cross and Blue shield of Iowa and Blue Cross and Blue Shield of

Oklahoma are totally separate legal entities, since they are both required to belong to the National Blue Cross and Blue Shield Association. 4. Whether the form letter dated December 28, 1977 sent by Defendant to Plaintiff after Plaintiff's initial telephone communication with Defendant, which letter stated, inter alia: "Please note that the benefits and rates may vary, to some extent, with your present coverage," is sufficient to put Plaintiff on notice that no Major Medical coverage was available to him when he applied for coverage with Blue Cross and Blue Shield of Oklahoma, in view of the fact that the letter was contrary to what Defendant's agent-employee had told Plaintiff, i.e., that Major Medical was available in Oklahoma but that the premium would be higher on a non-group basis. 5. What material Plaintiff received with the letter of December 28, 1977, and whether such material he received should be construed to have put Plaintiff on notice that the policy he was applying for with Blue Cross and Blue Shield of Oklahoma did not contain Major Medical coverage, in light of his initial conversation with Defendant's Agent-Employee in which he was told that Major Medical coverage was available to him on a Non-Group basis. 6. Whether Plaintiff was sufficiently informed that the term "Extended Benefits", as that term is used in Defendant's materials, was different from Major Medical Benefits. 7. Whether in the initial telephone conversation the statements made to Plaintiff by Defendant's Agent-Employee that Non-Group Major Medical coverage was available, and that the appropriate forms would be sent to Plaintiff, is sufficient to estop Plaintiff from denying Major Medical Coverage. 8. Whether Defendant's letter to Plaintiff of

November 27, 1979, which stated that Plaintiff had Major Medical Coverage, and which Plaintiff relied upon, was sufficient to estop Defendant from denying such coverage in view of the fact that the medical services for which Plaintiff's action is brought were rendered subsequent to the letter of November 27, 1979, and prior to the receipt by Plaintiff of Defendant's letter of December 10, 1982, in which Plaintiff was told by Defendant that the letter of November 27, 1979 was mistakenly mailed to Plaintiff as a result of a clerical error. 9. Whether the representations made to Plaintiff initially by Defendant's agent-employee in December of 1977 that major medical coverage was available and that the proper application would be sent to him, coupled with the fact that approximately one year later Plaintiff received a letter dated November 27, 1978 stating that Plaintiff had major medical coverage, is sufficient to estop Defendant from denying such coverage. 10. Whether Plaintiff, when he submitted a subsequent application to Defendant on March 25, 1980 for Major Medical coverage only did so because his coverage would then be in a group plan with lower rates, or whether as suggested by Defendant, he did so because he did not think he already had major medical coverage. 11. Whether Plaintiff, knowing he had non-group coverage with Defendant, nevertheless believed he had Major Medical coverage in view of his initial telephone conversation with Defendant's agent employee and the Defendant's letter of November 27, 1979 which referred to "[his] Major Medical program." 12. Whether Plaintiff, when he submitted his application for membership to Defendant, knew or should have known that the application did not include Major Medical coverage, in

view of his initial telephone conversation with Defendant's agent-employee in which he was told that Non-group Major Medical Coverage was available and that the proper application would be sent to him, and in view of the fact that he told Defendant's agent-employee that he had major medical coverage in Iowa, and that because of his continuing heart problem he needed that type of coverage in his Oklahoma plan. 13. Whether because of the relationship of the Defendant Blue Cross and Blue Shield of Oklahoma with Blue Cross and Blue Shield of Iowa, Plaintiff's coverage with Defendant amounts to a renewal of his coverage with Blue Cross and Blue Shield of Iowa which entitled him to the Major Medical benefits included in the Blue Cross and Blue Shield of Iowa policy.

In answers to interrogatories filed herein on November 9, 1984 Plaintiff stated that his initial communication with Defendant was by telephone; that he believes he made written notations during the telephone conversation but is unable to find them; that the contents of the initial communication between him and Defendant would have included discussions about the type of coverage Defendant was providing Plaintiff; that Major Medical coverage was specifically mentioned with Defendant's representative who stated that it would result in an increase in premium due to the fact that Plaintiff presently had a group policy which provided him with Major Medical coverage and he was now asking for individual Major Medical coverage; that Plaintiff also believes he told Defendant's representative that the reason for wanting continued Major Medical coverage was due to his prior health problems and that he was willing to pay the increase in

premium. Plaintiff further stated that he has no recollection as to the identity of Defendant's representative with whom he spoke other than it was someone in the Defendant's Tulsa office. (Plaintiff's Answer to Interrogatory No. 1)

In his answer to Interrogatory No. 2 Plaintiff states that in response to his initial contact with Defendant he received a telephone call from Defendant's representative, whom he could not identify, concerning background information on Plaintiff and his present group policy in Iowa; that he believes he received several booklets and documents from Defendant in response to his initial telephone conversation, although he does not remember specifically which documents he received. Plaintiff stated that he did not recall having received Defendant's letter of December 28, 1977 (Defendant's Exhibit 1 to Plaintiff's Deposition) but could have received it; that he did receive the document entitled "HAVE THESE QUESTIONS COME UP?" which document was attached as "EXHIBIT 1" to his answers to interrogatories, but that he did not receive the brochure (Defendant's Exhibit 3 to Plaintiff's Deposition) entitled "Non-Group and Group Conversion HOSPITAL, SURGICAL-MEDICAL AND EXTENDED BENEFITS, Blue Cross Blue Shield of Oklahoma." (Plaintiff's Answer to Interrogatory No. 3)

In his answer to Interrogatory No. 4 Plaintiff stated that he did receive an "APPLICATION FOR MEMBERSHIP - BLUE CROSS AND BLUE SHIELD OF OKLAHOMA" (Application) (Defendant's Exhibit 4 to Plaintiff's Deposition); that he did sign and date the Application which became effective February 28, 1978; that a Blue Cross Blue

Shield of Oklahoma Membership Agreement was issued to him but that he was unable to locate his copy of the Membership Agreement (Plaintiff's Answers to Interrogatory No. 4(c) and 4(d).

In his answer to Interrogatory No. 6 Plaintiff states, inter alia, that during his initial telephone communication with Defendant's representative he was specifically told that he could have Major Medical coverage; that this information was confirmed in other telephone conversations between Plaintiff and Defendant's representatives; that he could not recall the exact dates of any telephone conversations, except that they would have been between September, 1977 and September, 1978. Plaintiff further stated that he was led to believe he had Major Medical coverage by virtue of certain claims paid by Defendant; that his Oklahoma Blue Cross Blue Shield Identification Card shows a date of issuance which corresponds with the date of issuance of Plaintiff's policy in Iowa which Policy included Major Medical; that he relied upon Defendant's letter of November 27, 1979 (Defendant's Exhibit 10 to Plaintiff's Deposition) which makes reference to his "Major Medical program." He also states the fact that his premiums under the Oklahoma plan were higher than his premiums under the Iowa plan "confirmed to him" that he had Major Medical coverage.

In his deposition taken August 24, 1984 Plaintiff stated that he was a resident of Texas; that he had previously been a resident of Hugo, Oklahoma; that he was declared disabled in about 1981 but had not applied for nor had been determined by the Social Security Administration to be totally and permanently disabled until 1984; that he has had four heart attacks and open

heart surgery twice; that he had not engaged in any occupation or profession since approximately November of 1981; that prior to that time he was a real estate broker and had been engaged in the real estate business since 1965; that from 1974 to 1977 he was working in Iowa and moved to Oklahoma in approximately August of 1977; that while in the State of Iowa he was a member of Blue Cross and Blue Shield of Iowa through two different group programs; that he had never had non-group or individual coverage with Blue Cross Blue Shield of Iowa. He further testified that after he moved to Oklahoma he was notified that he would have to transfer his membership to Oklahoma; that he did not understand at that time that Blue Cross and Blue Shield of Oklahoma was a separate corporation and insurance company from Blue Cross and Blue Shield of Iowa. He was then asked certain questions about his answers to Interrogatories filed November 9, 1984. He testified that his first contact with Blue Cross and Blue Shield of Oklahoma was in the fall of 1977 after he moved to Oklahoma; that he does not recall who he talked to but thinks he talked to a Linda Bingham because that is the only name of anyone he remembers talking to at Blue Cross and Blue Shield of Oklahoma. He identified Defendant's Exhibit 1 as the letter to him dated December 23, 1977 signed by Linda Bingham which refers to "[e]nclosed ... material necessary to complete your transfer." He stated he did receive Defendant's Exhibit 2, entitled "HAVE THESE QUESTIONS COME UP?" and Defendant's Exhibit 4, "APPLICATION FOR MEMBERSHIP". He did not recall having received Plaintiff's Exhibit 3, which is a copy of Plaintiff's brochure entitled "Non-Group and Group Conversion HOSPITAL, SURGICAL-MEDICAL AND

EXTENDED BENEFITS" but did receive his Membership Agreement. He stated that he completed the Membership Application after reading the Membership Agreement. (Plaintiff's Deposition at 22) He further testified that he completed that portion of the Application for Membership under "HOSPITALIZATION" where he inserted "$40.00"; that he placed the "x" opposite "Plan 500" under "Surgical-Medical" and the "x" under "Extended Benefits". He was then asked whether at the time he completed the Application he knew what extended benefits are, to which he replied that he "didn't know at that time," and first learned of the difference between extended benefits and major medical coverage when "the confrontation started between [him] and Blue Cross." (Id. at 23-24) He was then asked: "When you got the membership agreement, did you read it to determine whether or not the coverage and benefits in that agreement were consistent with what you had checked and indicated on your application?" He replied: "I read the membership agreement and, you know, the Membership Agreement does not say $40 a day in there, but, you know, I read the membership agreement, yes." He further testified that from reading the Membership Agreement he determined that he had Blue Cross coverage and Blue Shield coverage, but did not "recall that there was anything in there [the Agreement] about extended benefits." (Id. at 25-26)

He identified Defendant's Exhibit 5 as a copy of his Membership Card issued to him by Blue Cross and Blue Shield of Oklahoma following his Application For Membership. He also identified Defendant's Exhibit 6 as "the second part of the [membership identification] card." He acknowledged that the

membership identification card shows, inter alia, "Extended Benefit" coverage which relates to the block on his application where he marked "x". He further stated that he received his membership identification card when he was first covered with Blue Cross and Blue Shield of Oklahoma. (Id. at 30-31)

Plaintiff identified Defendant's Exhibit 7 as a second Blue Cross and Blue Shield of Oklahoma application form which he signed and dated March 25, 1980; that he was told by his banker that the bank was "taking on a new plan, group plan so their depositors would be eligible for group coverage"; that he applied for the coverage because it "was a cheaper rate than [he] was paying." (Id. at 35) He further testified that he knew the group coverage for which he was applying included Major Medical benefits; that he did not compare the benefits he would receive under the group plan with his membership agreement under which he was covered at the time he made application for the group coverage, and that he thought his existing coverage included Major Medical benefits. (Id. at 37-38) He identified Defendant's Exhibit 8 as the "Health Check" brochure which had been in his possession and which he could have gotten in connection with his discussions with his banker and his application for group coverage in March of 1980. (Id. at 40)

He identified Defendant's Exhibit 9 as apparently identical to Defendant's Exhibit 8. It was noted that Defendant's Exhibit 8 did not contain the last page of Defendant's Exhibit 9 on which the form number was printed, "8.143REV.(8-79)RL" In answer to the question whether "it's obvious you could not have

original membership because it would have been issued in 1979", Plaintiff answered: "That's probably correct, yes." (Id. at 44)

Plaintiff further testified that he did not recall having filed any separate documents for Major Medical claims while he was in Iowa; that if there were separate claims submitted, the hospital or the doctor would have had him sign them and they were then sent in. (Id. at 46)

Plaintiff identified Defendant's Exhibit 10 as a letter dated November 27, 1979 which he received from Defendant in connection with a claim he had submitted for x-ray services, which letter denied payment for X-ray such services and included a paragraph stating that "[i]n addition to your basic coverage, you have further protection for health care expenses available through your Major Medical program" and that "[t]hese expenses may be reimbursable under this portion of your coverage subject to the deductible." Plaintiff was then asked whether "[t]his is the only time that you ever got any communication from them that said anything about Major Medical coverage, to which he responded "Any literature?" This was then followed by the question "after the time you got your membership," to which he answered "Yes, I believe so." (Id. at 48-49) The following questions and answers were then asked and answered by Plaintiff:

> Q. Okay. Now, let me ask you this: After you received this [Defendant's letter of November 27, 1979], did you submit a claim thereafter under major medical claim form of any kind for this denied amount or benefit?
>
> A. I don't know. I don't remember whether I did or not.
>
> Q. You have no records of whether you did or not?

it would have been the doctor's office. We would have just signed the form and it would have went in.

Q. Were you aware that in Oklahoma that physicians' offices and hospitals do not, and did not at that time, under the Blue Cross procedure, submit major medical claims in behalf of their patients?

A. No.

Q. You were not aware that under the Blue Cross Blue Shield of Oklahoma procedures major medical claims during this period of time we are talking about had to be filed and submitted by the member, because the member was paid direct on all major medical claims?

A. No, I was not aware of that.

Plaintiff identified Defendant's Exhibit 11 as a letter dated May 30, 1980 which was addressed to him at his business post office box in Idabel, Oklahoma in which he was advised that his application for group membership dated March 25, 1980 had been denied. He did not recall having received the letter but did know that his membership application had been denied.

Plaintiff identified Defendant's Exhibit 12 as a letter dated November 10, 1982 from Defendant which was addressed to him at his post office box in Hugo, Oklahoma, but he could not recall whether he received the letter. (Id. at 59) Plaintiff's attorney, Mr. Welch, stated that he would stipulate Plaintiff received the letter "because he has given me the original letter." (Id. at 69) This letter states that Defendant's letter of November 27, 1979 was mailed to Plaintiff "as a result of a clerical error."

On cross examination by his attorney, Plaintiff reiterated the content of his conversation with Defendant's agent-employee at the time of his initial contact with Blue Cross and Blue

the time he received the application form, it had partially been completed by Blue Cross and Blue Shield of Oklahoma.

On redirect examination by Defendant's attorney, Mr. Henson, Plaintiff testified that he graduated from high school; that he had attended "real estate schools, and [he] took the Dale Carnegie Course" which "is a general character improvement course"; that in his real estate business he "primarily handled farms"; that he handled "very expensive, three million dollar," real estate transactions; that he "had an attorney draw up contracts when [he] got involved in that size" transaction; that he did "read [contracts] and [discussed contracts] with an attorney"; that he did not get involved with property insurance contracts or casualty insurance policies of any kind in connection with his real estate business, and that he was in the real estate business for 15 years before he retired in 1981. (Plaintiff's deposition at 75-77).

The deposition of Linda Bingham Henson (Bingham), was taken on August 24, 1984. Bingham testified that she had been employed by Defendant since 1972; that for the last four years she has been performing duties as a customer service specialist; that at the time Plaintiff was issued his policy with Blue Cross and Blue Shield of Oklahoma her duties included transferring of memberships from another state to Oklahoma; that she was responsible for the transfer of Plaintiff's membership to Blue Cross and Blue Shield of Oklahoma but does not remember whether she had any contact with Plaintiff; that from Plaintiff's file it appears that he was first contacted by Blue Cross and Blue Shield of Oklahoma by

Defendant's letter of December 28, 1977 (Defendant's Exhibit 1); that at the time of Plaintiff's transfer there were six or seven other people that answered phones, any one of whom could have talked with Plaintiff, but that the information would have been relayed to her desk; that it was her job "to attempt to transfer the membership with continuous coverage"; that when a transfer request is made, they have a form they fill out which asks their name, their address, and information about their previous plan, their identification number, what they are paid up to, if they know; that if someone else filled out the form it would then come to her desk and she would mail out the application to the member for them to complete for the Oklahoma coverage; that the information written on the form is information that is taken from the customer over the telephone; that another way to transfer is for the customer to contact the state where they have their present coverage and request that state to transfer the information for them.

She further testified that she did not know whether she was the person who sent Plaintiff the application form which completed and returned to them. She stated that she recognized her handwriting on certain portions of the application; that she did not remember ever speaking with Plaintiff; that part of the information contained in the application was received from Blue Cross and Blue Shield of Iowa. She stated that the letter of December 28, 1977 (Plaintiff's Exhibit 2 to her Deposition) was a form letter which is sent out with all applications; that there was only one brochure that goes out with a non-group application which is the Non-Group and Group Conversion HOSPITAL, SURGICAL-

Deposition). She was then asked a series of questions about information shown on Plaintiff's application form. She stated that certain information as to Plaintiff's coverage in Iowa was provided by wire from Blue Cross and Blue Shield of Iowa; that the wire is sent through their computer system on a sheet of IBM paper which is a private inter-system communications wire service among the Blue Cross and Blue Shield companies in different states; she said that she did not have any record in Plaintiff's file of the wire received from Iowa. She further testified that if the type of coverage which the applicant had in the transfer state, Iowa, is not available in Oklahoma then the member has to take the coverage that is available in the state to where they are transferring. In answer to the question "How is this communicated to the member," Bingham answered that "in my letter dated December 28 of 1977 in the second paragraph the second sentence says, 'Please note that the benefits and rates may vary to some extent with your present coverage. Read the brochure carefully so you will know the coverage you are selecting.'" (Bingham's deposition at 27) She further stated that this would be the extent of any communications (the letter enclosing material which includes the brochure and questionnaire) which would have been sent to Plaintiff at the time he applied for coverage, that Blue Cross and Blue Shield of Oklahoma did not have Major Medical coverage for which he would be eligible.

She further testified that at the time Plaintiff applied for coverage Blue Cross and Blue Shield of Oklahoma did not offer Major Medical coverage with a non-group program. She further

stated that had Plaintiff been applying for a group in Oklahoma, he would have gone to the person who handled the coverage at his company, filled out an application, and sent it to Blue Cross and Blue Shield of Oklahoma. She further testified that at this time (August, 1984) a member that was on a group contract in another state can now have a Major Medical non-group contract with Oklahoma, but that in 1977 Blue Cross and Blue Shield of Oklahoma only had one non-group contract and that it did not include Major Medical.

On cross examination by her attorney, Mr. Henson, she testified that the signature on the letter of December 28, 1977 was not her signature; that she does not remember who signed her name, but that it would have been signed at her direction and under her supervision; that the "material" enclosed with the letter would have included an Application For Membership, the brochure entitled Non-Group and Group Conversion HOSPITAL, SURGICAL-MEDICAL AND EXTENDED BENEFITS (Defendant's Exhibit 3 to Plaintiff's Deposition), a "Rate Flier", and a questionnaire entitled "HAVE THESE QUESTIONS COME UP?" (Defendant's Exhibit 2 to Plaintiff's Deposition); that it was standard procedure to send the package of materials with the letter and that she would have no reason to believe that all of those materials were not sent with the letter to Plaintiff. She stated that she had attempted to find out who might have signed the letter to Plaintiff and has inquired of those working with her but has been unable to identify the person who signed the letter. She was then asked to describe the procedure "step by step" that she would have followed in getting the membership application form to Plaintiff,

and after getting it returned from him, processing the application for coverage. She stated that she would mail the non-group information to Plaintiff because it was all that was available to him at that time even if he had Major Medical in Iowa; that upon receipt of the completed application it would be put on to the computer and a billing notice and identification card would have been generated; that the identification card would have been mailed with the membership policy and that the billing notice would have been mailed separately; that Plaintiff had a $40 per day room allowance in the hospital coverage, Plan 500 for surgical-medical coverage, and extended benefits coverage; that it would not have included Major Medical coverage; that he was not eligible for Major Medical coverage and that his application did not show that he requested Major Medical coverage; that the brochure which would have been sent to Plaintiff did not contain any reference to Major Medical benefits; that the premium billing for which Plaintiff was charged and paid included the coverage for the $40 room allowance, Plan 500, and extended benefits; that there was no premium paid for Major Medical coverage.

She stated that she typed on Plaintiff's Application at the time it was sent to him the information "transfer, IA 140, BCBS 6-1-74, F M S"; that she also typed his name and the effective date of coverage on the form; that "the agreement number, the group number and type contract are [her] handwriting"; which were filled in after Plaintiff returned the application form to her; that the "group number" identifies the risk classification; that every contract has a "group number" whether it's for group or non-group coverage. She stated that commencing in about May of

1981 Oklahoma started offering Major Medical coverage to in-state transfers transferring into Oklahoma, on a non-group basis; that in order to obtain such coverage after May 1981 a person had to be in a group in another state or have group conversion, or non-group with Major Medical; that to her knowledge a person who has non-group coverage with Blue Cross and Blue Shield of Oklahoma at this time (August of 1984) cannot get Major Medical coverage. She was then asked: "If you had talked to Mr. Robinson, and you just don't recall it at this time, back in fall of 1977 and the winter of 1977, and he had informed you at that time that he was wanting to transfer in from Iowa with Major Medical and he explained to you that he was not going to transfer into a group here with Major Medical, would you have told him that he could have Major Medical," to which she replied "No, Sir." (Id. at 54-55)

On redirect examination by Mr. Welch, Bingham was asked where she would have gotten the Plaintiff's address in Oklahoma when she mailed the application to Plaintiff, to which she replied "[f]rom the wire I received from Iowa." She further stated in response to the question whether it was possible that the application she mailed to Plaintiff would have had none of the information included in the application at the time it was mailed to Plaintiff, to which she replied "No, Sir."

The deposition of Kay Bowman was taken on August 24, 1984. She testified that she was employed by Blue Cross and Blue Shield of Oklahoma on June 27, 1957 in customer service; that during the course of her employment she has been manager of document control, data entry, federal employees supplemental benefits,

Blue Cross claims, and customer service; that she is presently manager of customer service; that in 1977 they were offering group coverage, group buying through employment or association or relationships; that they were not at that time selling non-group coverage, except that they did offer non-group coverage, as in Plaintiff's case, through the inter-plan transfer agreement, which is a contract between various Blue Cross Plans throughout the country whereby the members are allowed to transfer their membership from one state (out-plan) to another state (in-plan) and are given the option of coverage that the in-plan state offers; that at that time and at the present time (August 1984), the bulk of the Blue Cross and Blue Shield of Oklahoma's policy writing has to do with groups. She was asked to explain the relationships between Blue Cross and Blue Shield of Oklahoma and Blue Cross and Blue Shield of other states, to which she replied that "[e]ach Blue Cross Plan is a separate independent corporation from the other Blue Cross Plans [corporations]"; that each has its "own enrollment regulations, their own contracts approved by the individual state insurance commissioners' office. ... their own rate structures. They are separate and independent." (Bowman's Deposition at 9) She further testified that all of the Blue Cross Corporations sign certain agreements including the "inter-plan agreement," which agreement relates to transfer between states and the payment of claims between states; and that the different corporations also belong to the National Blue Cross Blue Shield Association which is a trade association. She was asked whether or not Plaintiff ever utilized his Extended Benefit coverage, to which she replied that to the best of her knowledge

he did not. She was then asked to explain the type of Blue Cross and Blue Shield coverage that an individual such as Plaintiff would have had back in 1977 or 1978. She stated that Plaintiff had an option of selecting coverage of either $40, $50, or $60 toward the cost of a hospital room per day; that he selected $40 a day room allowance; that he had the option of selecting Blue Shield Plan 400, Plan 500 or Plan 600, which refers "roughly" to dollars and "would be the very maximum amount that we would pay for the most complicated surgical procedure that could be performed"; that "[e]ach surgery had a fee value attached to it, and it basically went using, Plan 500, as an example, of about $535 for the most complicated procedure, and priced downward from that." (Id. at 15) She also explained the difference in group coverage that was available to persons belonging to groups including "Health Check" [see Defendant's Exhibit 9 to Plaintiff's deposition]; that Health Check did not become available until June 3, 1976. She then described Major Medical coverage that was available to group members in 1977 and 1978. She was next asked questions concerning Plaintiff's application for membership and his membership card, many of which questions had previously been answered by Linda Bingham Henson in her deposition of the same date. She was then asked to describe the method in which a transfer is handled, to which she replied that if they received a telephone call from someone who was wanting to transfer into Oklahoma, they would normally refer them to their plan where they were then covered (Iowa) to process their transfer to Oklahoma through the inter-plan wire system to which the Plans (Iowa and Oklahoma) were connected; that if Oklahoma was transferring

someone to another state they would wire the other state to accomplish the transfer. She was asked whether or not it was common among some Plans to offer Major Medical to non-group members, to which she stated that she did not know whether it was common or not; that every state selects their own product line and that very likely many would offer it; that according to the information she received from Iowa they did offer Major Medical to non-group members. She was next asked whether a person in 1977 or 1978 who was a member of a non-group plan that had Major Medical and wanted to transfer the coverage to Oklahoma, whether it would have been the policy of Blue Cross and Blue Shield of Oklahoma to specifically advise him that Major Medical was not available to him, to which she stated that "[h]e would have been advised by the material that we sent to him as what the product would cover"; that "[i]f he at any time had asked the specific question, we would have advised him we did not have the product to offer to him"; that [t]he literature he was given would have given a brief description of the coverage"; that she doubted they "would have on any telephone call, say this would not include Major Medical, because [they] weren't really selling Major Medical." (Id. at 34)

She further testified that in 1977 there would have been a specific person and one back-up who handled the wire system; that there would have been several trained to handle the telephone calls relating to transfers; that it was the policy of the transfer department in sending out applications after receiving information that an individual was transferring from another state, to send "to the person transferring an application to be

completed so that he could be set up under our membership in Oklahoma, a descriptive brochure explaining the benefits, and a rate sheet since he would be -- have different options. He could select as to what the cost of each one would be." (Id. at 36) She was then asked to explain the circumstances surrounding Defendant's letter of November 10, 1982 (Defendant's Exhibit 12 to Plaintiff's Deposition), and Defendant's letter of November 27, 1979 (Defendant's Exhibit 10 to Plaintiff's Deposition). She stated that "[w]e do have the computerized letter indexed by code number that the claims examiner worked from"; that Plaintiff "actually received a computer F-31, and he should have received at this time [November 27, 1979] an F-32"; that Plaintiff "did receive an F-32 on September 25 of 1978"; that "[t]he letters basically are identical until you get to the last two paragraphs"; that they "did in error send the F-31 through a coding error that had the last -- next to the last paragraph stating, 'In addition to your basic coverage you have further protection for health care expenses available through your Major Medical program. These expenses may be reimbursible under this portion of your coverage subject to the deductible'; that "[t]he F-32 letter which [Plaintiff] received September 25th does not have that paragraph, and has a different closure on it." She further stated that "[t]he error could have been a coding error in that on the claim it indicated send F-31, or it could have been when it was input, that it was input as F-31 instead of F-32"; that "[t]hey hit the wrong key." (Id. at 40-41)

On cross examination she stated that the F-32 letter she referred to was sent to Plaintiff on September 25, 1978 which preceded the F-31 letter which was sent to him on November 27, 1979. She then read the F-32 letter of September 25, 1978 which stated as follows:

> A. "September 25, 1978, Dear Mr. Robinson, a claim has been received for x-ray services in behalf of the above patient. Under the terms of your membership agreement, benefits are available for interpretation of x-rays only when the x-rays are taken in a physician's office,and within 45 days of an accident. Benefits are not available for interpretation of x-rays taken while a hospitalized bed patient or in the outpatient department of a hospital.
>
> Since the services reported were rendered under the latter circumstances, benefits cannot be approved.
>
> Should you have questions with regard to this claim, we shall be pleased to assist you. Blue Shield Department. Carbon copy, Radiology Consultants."

(Id. at 42) She further testified that Plaintiff "had the coverage as outlined in the F-32 letter."

Bowman was then shown Plaintiff's Exhibit 5, which is a copy of the identification card issued to Plaintiff and which identifies the coverage on the bottom portion of the card. She stated that if Plaintiff had Major Medical coverage under his contract with Defendant it would have stated on the membership identification card that he had Major Medical coverage. She further stated that "Extended Benefits is an endorsement limited to 11 catastrophic illnesses," which "is not the same" as Major Medical coverage.

She further testified that at the time Plaintiff transferred to Oklahoma in 1977 and applied for coverage with Blue Cross and Blue Shield of Oklahoma the only kind of coverage that was

available to him as an inter-plan transfer from Iowa was the coverage described in Defendant's Exhibit 1 to her deposition, which is a copy of the "NON-GROUP MEMBERSHIP AGREEMENT"; that the "Non-Group Membership Agreement" provides for three kinds of coverage, basic hospital benefits, basic physicians and medical benefits and catastrophic illnesses, as described in Schedules A, B, and C to the Membership Agreement. (Id. at 50) She further stated that this membership agreement and contract form represents the agreement and contract which would have been issued to Plaintiff in accordance with his application and as described in his identification card; that the agreement and contract form (Plaintiff's Exhibit 1 to her deposition) is consistent with the brochure and application form which would have been sent to Plaintiff in any letter to him to transfer his membership from Iowa to Oklahoma; that after Plaintiff's application was received and membership granted he would have been seen his identification card and membership agreement and would then have started receiving billings for premiums. (Id. at 53)

She further stated that Defendant's Exhibit 1 to her deposition is a copy of the membership agreement form used in connection with Plaintiff's Application for Membership, which Membership Agreement Plaintiff received, and for which coverage he was billed and paid premiums; that he did not at any time pay any premiums for Major Medical coverage; that if Plaintiff had Major Medical coverage he would have completed special forms for filing for Major Medical claims; that there were no records of Plaintiff ever having filed any Major Medical claims or requested any forms for filing Major Medical claims. She was asked whether after the

letter of November 27, 1979 had been sent to Plaintiff, she found "any evidence after that time of any Major Medical claim response by him" to which she replied "No, I did not." (Id. at 55)

Attached to "DEFENDANT'S REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT" filed December 21, 1984 is an Affidavit of Kay Bowman dated December 20, 1984. The affiant is the same Kay Bowman who testified by deposition on August 24, 1984. In her Affidavit Bowman states, inter alia, that during the years 1977 and 1978 her responsibilities with Blue Cross and Blue Shield of Oklahoma included the "Inter-Plan Transfer Program, which is a voluntary reciprocal program for transfer of memberships between the various independent Blue Cross and Blue Shield Plans throughout the United States"; that she is "familiar with the Inter-Plan Transfer Agreement [Agreement] which existed and was in force at such time and which is still in force"; that "[t]he Agreement was the document which regulated and provided for any transfer rights to membership and coverage in a Blue Cross and Blue Shield Plan for a person moving from one State to another State who had and wished to retain Blue Cross and Blue Shield membership and coverage."

Bowman further states in her Affidavit that a copy of the Agreement is attached as Exhibit "A" to her Affidavit which was in effect at the time of Plaintiff's transfer to Blue Cross and Blue Shield of Oklahoma. In the Agreement, "Out-Plan" is defined as the "Participating Plan [Blue Cross and Blue Shield of Iowa] in which the transferring subscriber is terminating his membership." "In-Plan is defined as "the Participating Plan [Blue Cross and Blue Shield of Oklahoma] in which the transferring subscriber is

obtaining membership." "Certificate" is defined as "the document by virtue of which the subscriber is entitled to benefits." "Subscriber" is defined as "the person in whose name [illegible] has been issued by the Out-Plan and shall include such of his dependents as are entitled to benefits under his certificate at the time of his original request to the In-Plan for Transfer." "Non-Group Certificate" is defined as "a type of certificate sometimes issued to persons originally enrolling in a Participating Plan without group affiliation."

Paragraph "V. A - 1" of the agreement states that "[i]f the transferring subscriber is employed or associated with a group regularly enrolled in the In-Plan, he shall be entitled to membership through that group."

"V. - B" states that "[i]f the transferring subscriber is not so employed or associated, he shall be issued the certificate regularly issued by the In-Plan to persons who have left the employ of one of its regular groups."

Bowman further states in her Affidavit that "[t]he records show Mr. Robinson was not transferring into any regularly enrolled group or association of Blue Cross and Blue Shield of Oklahoma, the In-Plan, and, therefore, he was only eligible to be issued the Certificate regularly issued by Blue Cross of Oklahoma as provided in Paragraph V, B"; and "[t]hat Certificate was Non-Group Left-Employ Membership coverage which consisted of Basic Hospital (Blue Cross), Surgical-Medical (Blue Shield) and Extended Benefits (EB) coverages"; and that "[i]t did not include Major Medical coverage."

Paragraph "VI" of the Inter-Plan Transfer Agreement states, inter alia, that "[t]he Undersigned Plan [Blue Cross and Blue Shield of Oklahoma] further agrees that it will recognize prior coverage under Major Medical or Extended Benefits and provide continuity of coverage whenever both the Out-Plan and the In-Plan offer such coverage to particular classes of subscribers. (Eg, if the In-Plan provides coverage for group members only, it would not be required to offer the coverage to a transferring direct-pay subscriber)"

Bowman stated in her Affidavit that "according to our records, Blue Cross and Blue Shield of Oklahoma only offered Extended Benefits to Mr. Robinson's transfer-in class of subscriber at the time of his transfer and did not offer any Major Medical benefits under its Non-Group coverage for which he was eligible."

Also attached to "DEFENDANT'S REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT" is the Affidavit of Thomas H. Gudgel, Jr. dated December 20, 1984 in which Gudgel states that "[a]s part of [his] duties as an employee and Senior Vice President - General Legal Counsel of Blue Cross and Blue Shield of Oklahoma [he] [is] responsible for general legal supervision, administration and maintenance of its legal records, including its Articles of Incorporation, By-Laws and its License and Charter to do business in the State of Oklahoma"; that he also has "personal knowledge and understanding of the Oklahoma Statutes which especially authorize the incorporation and organization of the Corporation"; that "[a]s a Not-for-Profit Corporation ... the Corporation is not authorized to issue and

has no shares of stock; it has no shareholders or other equity owners and its assets are held in trust for the use and benefit of its members and holders of its Membership Benefits Agreements and policies issued to residents of the State of Oklahoma; its Directors/Trustees are required to be and are residents of the State of Oklahoma, none of whom are members of or have any interest in any other Blue Cross or Blue Shield Plans out of the State of Oklahoma, whatever; and it is a distinctly domestic Oklahoma Corporation which is authorized to do and conduct its business only within the geographical confines of the State of Oklahoma"; that "Blue Cross and Blue Shield of Oklahoma does, in exchange for its license to use the "Blue Cross" and "Blue Shield" trade names, service marks and logos, and in exchange for other reciprocal and "interstate Plan" benefits for its Oklahoma members and members of other independent Blue Cross and Blue Shield Plans throughout the United States, voluntarily belong to and is a member of the National Blue Cross and Blue Shield Association, which is a non-profit trade and professional association of the independent Blue Cross and Blue Shield Plans in the United States and Canada"; that "Blue Cross and Blue Shield of Oklahoma is not an owned or controlled subsidiary or corporate affiliate of the National Blue Cross and Blue Shield Association or located at any other place out of the State of Oklahoma."

FINDINGS OF FACT

The Court makes and enters the following undisputed Findings of Fact:

1. At the time Plaintiff filed his Complaint and Amended Complaint he was a citizen of the State of Texas and Defendant was and is a corporation organized and existing under the laws of the State of Oklahoma, having its principal place of business in the State of Oklahoma.

2. The amount in controversy exceeds, exclusive of interest and costs, the sum of $10,000.00.

3. On or about February 28, 1978, Plaintiff established permanent residence in the State of Oklahoma, moving to the State of Oklahoma from West Union, Iowa.

4. While living in Iowa, and immediately preceding his move to Oklahoma, Plaintiff was a member of Blue Cross and Blue Shield of Iowa and had group coverage, including Major Medical, through Farm Bureau of Iowa. Plaintiff had never been on a non-group or an individual coverage basis with Blue Cross and Blue Shield of Iowa. (Plaintiff's Deposition at 11)

5. Plaintiff's first contact with Blue Cross and Blue Shield of Oklahoma was by telephone, at which time he talked with a woman representative of Blue Cross and Blue Shield of Oklahoma. The "content of the conversation" was that he was now living in Oklahoma and was interested in transferring his coverage here; that he may have been notified by Iowa that he had to do so; that he told "her" that he had some previous heart conditions and wanted to stay with Blue Cross because he could not qualify for other plans; that he had Major Medical coverage under his plan with Blue Cross and Blue Shield of Iowa and wanted Major Medical coverage with Blue Cross and Blue Shield of Oklahoma. (Id. at 69-70)

6. Thereafter, Defendant mailed a letter dated December 28, 1977 (Defendant's Exhibit 1 to Plaintiff's Deposition) to Plaintiff, in which certain materials were enclosed necessary to complete Plaintiff's transfer of his membership to Blue Cross and Blue Shield of Oklahoma. The letter states, inter alia, "Please note that the benefits and rates may vary, to some extent, with your present coverage. Read the brochure carefully so you will know the coverage you are selecting."

7. The "material" referred to in Defendant's letter of December 28, 1977 included the brochure entitled "Non-Group and Group Conversion HOSPITAL, SURGICAL-MEDICAL AND EXTENDED BENEFITS (Defendant's Exhibit 3 to Plaintiff's Deposition), the questionnaire "HAVE THESE QUESTIONS COME UP?" (Defendant's Exhibit 2), the APPLICATION FOR MEMBERSHIP (Defendant's Exhibit 4) and a "Rate Flier" which set out the rates that would be charged for the coverage purchased by the transferee and the kind of coverage that the transferee would be afforded. (Deposition of Linda Bingham Henson at Pages 38-41)[1]

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[1] Bingham testified that it was Defendant's custom and practice to enclose with the letter, which was a form letter, to Plaintiff dated December 28, 1977 as "the material necessary to complete" Mr. Robinson's transfer, the brochure, application, questionnaire and rate flier. Plaintiff admits that he received the Application for Membership and the questionnaire in his answers to Interrogatories. Plaintiff also states that he "believes he received several booklets and documents from the Defendant in response to his initial inquiry, although he does not remember specifically which he received"; that he does remember receiving the document "have these questions come up?"; that he "does not specifically recall the letter of December 28, 1977 but could very well have received it"; that he "did not receive the other brochure referred to Interrogatory No. 3 (b) [Defendant's Exhibit 3 to Plaintiff's Deposition]." However, in Plaintiff's deposition he was questioned as to whether he received the brochure (Plaintiff's Exhibit 3) as follows: "Q. Now, are you saying you didn't receive it, or you could have and you just don't recall it? A. I don't recall that I did. ... Q. (By Mr.

8. Plaintiff read the document entitled "HAVE THESE QUESTIONS COME UP?" (Defendant's Exhibit 2 to Plaintiff's Deposition) which accompanied Defendant's letter of December 28, 1977, and which included the question "Why is there a difference in the membership dues charged in Oklahoma from those I previously paid?" The answer to the question stated: "The reason for the difference, if any, in your membership dues payments in Oklahoma from those of your former Plan is that each Blue Cross and Blue Shield Plan is separate and self-governing. Therefore, the membership dues and benefits vary among them. Each Plan bases its dues on the health care costs in its own service area in order to offer the maximum benefits at the lowest costs to its members." (emphasis added)

9. Defendant's brochure, "Non-Group and Group Conversion HOSPITAL, SURGICAL-MEDICAL AND EXTENDED BENEFITS" (Defendant's Exhibit 3 to Plaintiff's Deposition) describes the coverages for which Plaintiff applied when he completed the "APPLICATION FOR MEMBERSHIP" (Defendant's Exhibit 4 to Plaintiff's Deposition), to

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Henson) Now, do you recall whether or not in that same communication your application form for membership was enclosed? A. Yes." (Plaintiff's Deposition at 20) From Plaintiff's deposition testimony it is clear that Plaintiff does not recall precisely what documents he received with the Defendant's letter of December 28, 1977. (Id. at 25) After his answer that he did not "recall" that he did receive the brochure he was then asked "but you do agree that the letter refers to the brochure," to which he replied "Yes. And I received a membership agreement." (Id. at 20) Both the brochure and the membership agreement explain in detail the benefits for which Plaintiff made application. The membership agreement, which Plaintiff stated he had when he filled out his application for membership (Id. at 22), was not actually mailed to Plaintiff until after Defendant had received his application for membership. However, the brochure, which was mailed to Plaintiff by Defendant at the time Defendant mailed the application for membership, describes the same coverage as described in the membership agreement.

wit, "HOSPITALIZATION", "SURGICAL-MEDICAL" and "EXTENDED BENEFITS". There is no reference in either the Application for Membership or the brochure (Defendant's Exhibit 3 to Plaintiff's deposition) to Major Medical coverage.

10. After Defendant received Plaintiff's Application for Membership, Defendant mailed Plaintiff his Membership Agreement.[2] There is no reference in the Membership Agreement to Major Medical Coverage for Major Medical Coverage. (Id. at 54)

11. Plaintiff's Identification Card, which was mailed to him by Defendant along with his Membership Agreement following receipt by Defendant of Plaintiff's Application for Membership, describes Plaintiff's coverage as "HOSPITAL", "PHYSICIAN" and "EXTENDED BENEFITS", and the effective date for each coverage as February 28, 1978. Major Medical is not shown under coverage on Plaintiff's Identification Card. (Defendant's Exhibits 5 and 6 to Plaintiff's Deposition)

12. On November 27, 1979 Defendant mailed Plaintiff a form letter (Defendant's Exhibit 10 to Plaintiff's Deposition). By reason of a clerical error, the letter to Plaintiff included a paragraph which states: "In addition to your basic coverage, you have further protection for health care expenses available

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2 In PLAINTIFF'S ANSWERS TO DEFENDANT'S FIRST INTERROGATORIES TO PLAINTIFF, INTERROGATORY NO. 4, Plaintiff states that he was issued a membership agreement to be effective February 28, 1978 in response to his submission of his application for membership, but he stated that he "is unable to locate his copy of the complete Membership Agreement, policy and contracts." The parties have not provided as part of the record in this case a copy of Plaintiff's membership agreement, but have identified as Defendant's Exhibit 1 to the deposition of Kay Bowman a copy of the "NON-GROUP MEMBERSHIP AGREEMENT" form, and it is undisputed that Plaintiff's Membership Agreement was issued using that form. (Bowman's Deposition at 48-54)

through your Major Medical program. These expenses may be reimbursable under this portion of your coverage subject to the deductible." The letter further stated: "If you have any questions regarding this claim, please call (918) 583-8390 between 9:00 A.M. and 3:00 P.M." Plaintiff did not respond to the letter of November 27, 1979 either by telephone or in writing. Defendant's letter of November 27, 1979 is a form letter stored by computer. There is a computerized letter index by code number from which the claims examiner works. The code number for Defendant's letter of November 27, 1979 is "F-31". The claims examiner should have received computer form letter "F-32" which should have been sent to Plaintiff. The letters, "F-31" and "F-32", are identical except for the last two paragraphs. Whereas, form letter "F-31" contains the language quoted above in Defendant's letter of November 27, 1979, form letter "F-32" does not contain that language, nor does it have any reference to "Major Medical program" or coverage. The clerical error was due either to a coding error, in that on the claim it could have indicated send form letter "F-31", or it could have been when it was in-put that it was in-put as "F-31" instead of "F-32", by hitting the wrong key. (Bowman's deposition at 40-41) Prior to Defendant's letter of November 27, 1979, Plaintiff had been sent form letter "F-32", which letter was dated September 25, 1978. The letter of September 25, 1978 contained the identical language as the letter of November 27, 1979 in the first two paragraphs, but the third paragraph of Defendant's letter of September 25, 1978 to Plaintiff stated: "Since the services reported were rendered under the latter circumstances, benefits cannot be

approved." The fourth paragraph of each letter was substantially the same. (Id. at 42) It was not Defendant's intention to amend its agreement with Plaintiff so as to include Major Medical coverage by its letter of November 27, 1979, nor did the letter operate to make any such amendment to Plaintiff's membership agreement.

13. Plaintiff did not rely on Defendant's letter of November 27, 1979 for any purpose relating to his claim for Major Medical coverage against Defendant.

14. In March of 1980 Plaintiff submitted an application for group coverage with Blue Cross and Blue Shield of Oklahoma through his bank, Citizens State Bank of Hugo, Oklahoma. (Defendant's Exhibit 7 to Plaintiff's Deposition) The plan for which Plaintiff applied is described in the brochure entitled "Health Check" and provides coverage for Hospital Benefits, (Blue Cross), Physicians' Benefits" (Blue Shield) and "Major Medical". (Defendant's Exhibit 9 to Plaintiff's Deposition) Plaintiff's Application was denied by letter from Defendant to him dated May 30, 1980 for the "Reason" stated as follows: "Applicant - Due to open heart surgery. You may remain on Non-Group." (Defendant's Exhibit 11 to Plaintiff's Deposition)

15. Defendant complied with the provisions of the "INTER-PLAN TRANSFER AGREEMENT" (Exhibit A to the Affidavit of Kay Bowman filed December 21, 1984 as an Exhibit to Defendant's Reply Brief). Defendant issued Plaintiff its membership agreement providing the only coverage available to Plaintiff, which "was Non-Group Left-Employ Membership coverage which consisted of

Basic Hospital (Blue Cross), Surgical-Medical (Blue Shield) and Extended Benefits (EB) coverages. It did not include Major Medical coverage." (Bowman's Affidavit at 3)

16. Any conclusion of law that could also be considered a finding of fact shall be included herein.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the subject matter and the parties to this action.

2. This is a diversity action and the Court must apply the substantive law of Oklahoma. Erie Railroad Co. v. Tompkins, 304 U.S. 64, 78 (1938); Volis v. Puritan Life Ins. Co., 548 F.2d 895, 905 (10th Cir. 1977)

3. If there are disputed factual issues summary judgment must be denied. Bankers Trust Company v. Transamerica Title Insurance Company, 594 F.2d 231 (10th Cir. 1979). In Bankers Trust Company, the court stated:

> Summary Judgment must be denied unless the moving party demonstrates his entitlement to it beyond a reasonable doubt. Madison v. Deseret Livestock Co., 574 F.2d 1027 (10th Cir. 1978); Mustange Fuel Corp. v. Youngstown Sheet & Tube Co., 516 F.2d 33 (10th Cir. 1975). The Courts must consider factual inferences as tending to show triable issues of material facts in the light most favorable to the existence of such issues in assessing a motion for summary judgment. Dzenits v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 494 F.2d 168 (10th Cir. 1974). Pleadings and documentary evidence must be construed liberally in favor of the party opposing such a motion. Harman v. Diversified Medical Investments Corporation, 488 F.2d 111 (10th Cir. 1973), Cert. denied, 425 U.S. 951, 96 S.Ct. 1727, 48 L.Ed.2d 195 (1976)

594 F.2d at 235.

In Harsha v. United States, 590 F.2d 884, 887 (10th Cir. 1979) the Court stated that "when a motion for summary judgment is properly made and supported by pleadings, depositions and

documents, as here, and the opposing party fails to raise a triable issue of material fact, summary judgment must be granted." (citing Ando v. Great Western Sugar Company, 475 F.2d 531 (10th Cir. 1973)).

4. In his Brief in opposition to Defendant's Motion for Summary Judgment Plaintiff contends that "the actual 'non group membership agreement involved herein ... does not contain terms which are clear and unambiguous and therefore parole evidence may be admitted to interpret same." (citing Eagle Printing and Publishing Company v. Chandler, 116 Okl. 108, 243 P. 233 (1926). (Plaintiff's Brief at 11) Plaintiff refers to SECTION 1, ARTICLE 1 N. SCHEDULE OF BENEFIT ALLOWANCES as "an example of the complexity and ambiguity contained in the 'non group membership agreement.'" (Ibid) That provision states as follows: "'Schedule of Benefit Allowances' means the partial schedule of indemnification printed in Section 2, Schedule B hereof and the master Indemnification Schedule on file in the general offices of the Plan,[3] which together set forth all of the surgical procedures and the amount of indemnification therefor."[4] (Defendant's Exhibit 1 to Bowman's Deposition) Plaintiff further contends

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[3] Neither Plaintiff nor Defendant have referred to, or included in the record, any language in "the master Indemnification Schedule on file in the general offices of the plan [Blue Cross and Blue Shield of Oklahoma]." The Court therefore assumes that the "master Indemnification Schedule" does not contain any language that is relevant to the issues raised by Defendant's Motion for Summary Judgment.

[4] Other provisions of the Membership Agreement relating to benefits or coverage are set forth in Exhibit "A" attached hereto.

that "the Court must resort to parole evidence to determine the intentions of the parties and thus must consider the representations made to Plaintiff when he first inquired about his coverage by telephone, ..." (Id. at 12)

Defendant contends that "Plaintiff's Application for Membership to the Defendant dated January 1, 1978, the pre-application written materials consistent with the Application sent by the Defendant to the Plaintiff on December 28, 1977, the written membership and Agreement and identification card of coverage effective February 28, 1978, which was issued and delivered to the Plaintiff, and the premium (dues) payments for the described coverages issued by the Defendant to the Plaintiff clearly establish the contract to be as asserted by the Defendant." (Defendant's Brief in support of its Motion for Summary Judgment filed November 9, 1984 at 15)

Defendant further contends that "where the terms of the insurance contract are established by clear, consistent and unambiguous facts, ... no forced or strained construction should be inferred from the uncontroverted facts to give effect to a policy or contract not contemplated or entered into between the parties." (citing Pitchford v. Electrical Workers Ben. Assoc., 113 P.2d 591 (Okl. 1941).

In Evans v. Hartford Life Insurance Company, 704 F.2d 1177, 1179, (10th Cir. 1983) the Court stated:

> An insurance policy is generally regarded as a contract, and many of the traditional elements of contract law apply. Because of the nature of the typical insurance transaction, however, special rules of construction apply in addition to general precepts of contract law. Under Oklahoma law, insurance policies are treated as adhesion contracts. Short v. Oklahoma Farmers Union Insurance Co., 619 P.2d 588, 589 (Okla. 1980). Although ambiguities and uncertainties in

> insurance policies are strictly construed against the insurance company, parties to the policy are bound by its provisions under contract law, and a company's legal liability will generally extend no further. Travelers Insurance Co. v. Morrow, 645 F.2d 41, 44 (10th Cir. 1981); see Badgett v. Oklahoma Life Insurance Co., 176 Okla. 86, 54 P.2d 1059, 1062 (1935).

See also Wilson v. Travelers Insurance Co., 605 P.2d 1327 (Okl.1980); Lester v. Sparks, 583 P.2d 1097, 1099 (Okl.1978).

In Lester the Court stated that "[t]he policy, its language, definitions, terms, endorsements, etc. are not the result of an ordinary bargain struck in the market place but bears the considered approval of its terms and conditions by the Insurance Commissioner of Oklahoma or the Insurance Board, as the case may be, 36 O.S.1971, §§ 3601-3638." Id. at 1099.

If the language of the policy is either "uncertain or susceptible to more than one construction, we must construe that language most strongly against the insurer and accept the construction most favorable to the insured." Transport Indemnity Company v. Home Indemnity Company, 535 F.2d 232, 236 (3d Cir.1976), citing Blocker v. Aetna, 232 Pa.Super. 236 (3d Cir. 1976), 111, 114, 332, A.2d 476, 478 (1975). See also Commercial Union Assurance Companies v. Aetna Casualty and Surety Company, 455 F.Supp. 1190 1193 (D.C.N.H. 1978), wherein the Court in construing the scope of insurance coverage employed "a standard of considering the policy as a whole in view of all the circumstances and as interpreted by a reasonable person in the position of the insured." The Court further stated:

> The policy is to be interpreted from the standpoint of the average layman 'in light of what a more than casual reading of the policy would reveal to an ordinary intelligent insured'. (Citations omitted) The objectively reasonable expectations of the insured will

be honored, even though painstaking study of the policy provisions would have negated those expectations. Atwood v. Hartford Accident & Indemnity Company, 116 N.H. 636, 637, 365 A.2d 744, 746 (1976).

Title 15 of the Oklahoma Statutes provides the Court with a number of rules for the construction of contracts. But "these rules are merely aids to the court in reaching the cardinal object, the intent of the parties at the time of contract." Universal Underwriters Insurance Company v. Bush, 272 F.2d 675, 678 (10th Cir. 1959).

In Prowant v. Sealy, 187 P. 235, 239 (Ok. 1919), the Court stated:

> Where a written contract is complete in itself, and the same, viewed in its entirety, is unambiguous, its language is the only legitimate evidence of what the parties intended by it the intention of the parties is to be gathered solely from the words used; and courts will not resort to construction, but will enforce the contract according to its terms. ..."

In addition to those rules of construction set out in Prowant, Title 15 of the Oklahoma Statutes contains, inter alia, §§ 152, 154, 155, 156, 160 and 170 which state:

> A contract must be so interpreted as to give effect to the mutual intention of the parties,as it existed at the time of contracting, so far as the same is ascertainable and lawful. § 152.
>
> The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity. § 154.
>
> When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible, subject, however, to the other provisions of this article. § 155.
>
> When through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarded. § 156.
>
> The words of a contract are to be understood in their ordinary and popular sense, rather than according to

> their strict legal meaning, unless used by the parties in a technical sense, or unless a meaning is given to them by usage, in which case the latter must be followed. § 160.
>
> In cases of uncertainty not removed by the preceding rules, language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promisor is presumed to be such party, ... § 170.

In Harrison Western Corporation v. Gulf Oil Corporation, 662 F.2d 690, 695 (10th Cir. 1981), the Court stated:

> If the terms are clear, the intent of the parties must be ascertained from the contract itself. Brown v. American Bank of Commerce, 79 N.M. 222, 441 P.2d 751 (1968); McKinney v. Davis, 84 N.M. 352, 503 P.2d 332 (1972). If the contract is unambiguous, construction of the contract is a question of law and summary judgment is appropriate. C. F. Braun & Co. v. Oklahoma Gas & Electric Co., 603 F.2d 132 (10th Cir. 1979); Jaeco Pump Co. v. Inject-O-Meter Manufacturing Co., 467 F.2d 317 (10th Cir. 1972). A contract is ambiguous only if it is reasonably and fairly susceptible of more than one meaning; the fact that the parties disagree as to the meaning does not establish the presence of ambiguity. Vickers v. North American Land Developments, Inc., 94 N.M. 65, 607 P.2d 603 (1980); Cain v. Nat'l. Old Line Insurance Co., 85 N.M. 697, 516 P.2d 668 (1973).

The Court concludes that the NON-GROUP MEMBERSHIP AGREEMENT issued to plaintiff by Defendant is not ambiguous and that parole evidence should not be resorted to in order "to determine the intentions of the parties" as contended by Plaintiff.

5. Plaintiff next asserts "that the Defendant, by its actions is estopped to deny Major Medical coverage" because of "[t]he representations made over the telephone to Plaintiff that Major Medical coverage was available to him upon transferring his health insurance from Blue Cross Blue Shield of Iowa to Blue Cross Blue Shield of Oklahoma and that the necessary application therefor would be sent to him," and by "[t]he clear statements in

Defendant's letter dated November 27, 1979 to Plaintiff which clearly stated he had Major Medical coverage." (citing Bailey v. Murdock, 421 P.2d 639 (Okl.1966); Walker and Withrow, Inc. v. Haley, 653 P.2d 191 (Okl.1982); Clark v. National Aid Life Ass'n., 57 P.2d 832 (1936)) (Plaintiff's Brief at 12-13).

In Walker the Court stated:

> The elements necessary to create estoppel are false representation or concealment of material fact, with actual or constructive knowledge thereof by party claimed to be estopped, other party's lack of knowledge or means of knowledge of real facts, intention that representation or concealment should be acted on, and reliance or action thereon by party claiming estoppel to his prejudice.

Id. at 193.

Bailey involved a suit by Plaintiff to establish a joint venture and for an accounting under an alleged oral agreement to acquire and develop oil and gas leases. The "issue of fact before the trial court was the question of what was the precise agreement of the parties." 421 P.2d at 642. In defense of Plaintiff's action Defendant pleaded latches and estoppel. The trial court's judgment in favor of Defendant was reversed on appeal because the record did not support the court's findings of latches and estoppel. Id. at 643.

In Clark Plaintiff's action was on a policy of insurance issued by Defendant. Plaintiff claimed and the Court held "that the good health provision of the benefit certificate was waived by the defendant and that defendant was estopped to deny that the contract of insurance was in effect at date of death of insured." 57 P.2d 835.

Because of the factual difference in the instant case with the facts in Walker, Bailey and Clark, Plaintiff's reliance on those cases is misplaced.

Following the initial telephone conversation between Plaintiff and Defendant's employee, Defendant mailed its letter of December 28, 1977 (Defendant's Exhibit 1) to Plaintiff, which enclosed, inter alia, the Application for Membership and Questionnaire (Defendant's Exhibits 2 and 4). It is undisputed that Plaintiff read the Questionnaire and that he read, completed and returned the Application for Membership. Plaintiff does not "recall" having received Defendant's letter of December 28, 1977 and the brochure (Defendant's Exhibit 3), which was mailed with the letter.[5]

The Court concludes that Plaintiff knew or should have known that his Membership Agreement did not include Major Medical coverage, and his claim of estoppel based on the telephone conversation to which Plaintiff refers and Defendant's letter of November 27, 1979, is not supported by the facts or law in this case.

---

[5] The receipt by Plaintiff of Defendant's brochure (Defendant's Exhibit 3) at the time he completed his application for membership is not critical to this conclusion of law since it is undisputed that following Plaintiff's submission of his application for membership to Defendant he was mailed his Membership Agreement and Identification Card, which Plaintiff states in his deposition that he read. The form of the membership agreement is identified as Defendant's Exhibit 1 to the deposition of Kay Bowman and clearly provides coverage only for "Basic Hospital Benefits", "Basic Physicians and Medical Care and Services Benefits" and "Catastrophic Illness (Extended Benefits) in Schedules A, B, and C to the Membership Agreement. No reference is made to, nor does the agreement provide for, Major Medical coverage. Plaintiff was at least generally aware of the kinds of benefits included under his major medical coverage with Blue Cross and Blue Shield of Iowa because he stated in his Affidavit and Deposition that he told Defendant's employee he needed and wanted Major Medical coverage.

6. Defendant next contends "that he is entitled to reformation of the contract of insurance issued him by Defendant"; that "[t]his contention is based primarily upon Plaintiff's claim that Defendant's agent initially represented that Major Medical coverage was available to him and he advised that was the coverage he needed and desired." (citing Warner v. Continental Casualty Co., 534 P.2d 695, (Okl.1975) as "on point.") (Plaintiff's Brief at 14).

In Warner, Plaintiff (Warner), who was Chairman of the State Republican Committee, brought suit against Continental Casualty Company (Continental) seeking reformation of the insurance policy issued to him by Continental. The Court relates the facts surrounding the issuance of the policy to Warner as follows: The State Republican Committee had been dissatisfied with its existing group major medical policy with Aetna, and in an effort to obtain a more favorable premium rate the Committee contacted Al Snipes who was acquainted with most of the employees and had handled the insurance needs of the Committee in other situations. Snipes was a licensed soliciting agent for Continental, but was not familiar with the group major medical plan Continental offered. Snipes obtained a copy of the Committee's existing group policy in order to compare it with other insurance plans. Snipes consulted Gerald Snow (Snow), a Continental field representative. Snow apparently had no authority to take applications for insurance directly from customers and was limited to solely encouraging agents to sell Continental Insurance. Snow had contacted Snipes on numerous occasions to solicit business for Continental. Snipes furnished Snow with certain information as

to the needs of the Committee and told him he wanted to compare rates in order to determine if changing insurance from Aetna to Continental would be logical. Snow and Snipes then met with the State Committee and Snow presented the Continental group plan and Snipes presented a major medical policy provided by Aetna Insurance Company. During the presentation both Snow and Snipes made remarks to the effect that the two policies were essentially the same. Snipes was asked what he thought of the Continental plan and replied that "that it sounded good to him; that it would be adequate; that the Aetna plan certainly did not match it as far as premiums were concerned; and that the Aetna policy (which was clearly a major medical plan) and the Continental Policy were essentially the same." 534 P.2d at 697. The Court stated:

> The evidence clearly indicates that the Committee employees, including Warner, relied upon the representations of Snow and Snipes in selecting the Continental policy over the Aetna policy, and believed that they had chosen a major medical plan similar to the Aetna policy presented by Snipes. All of the employees signed applications for a group policy without knowing or being informed by either Snow or Snipes that they were in fact making application for a group hospital plan rather than a group major medical plan.
>
> Warner never discovered that the Continental policy did not include major medical coverage until nearly a year later when he sustained serious injuries from an automobile accident.

Id. at 697. The Court found that "Warner relied, in part, upon the erroneous representations of Continental's "soliciting agent", Snipes, and Continental is accordingly bound by them." Id. at 699. The Court also found that "Continental is also bound by the actions and erroneous representations of its Field Representative Snow"; that "Snow also made statements to the

effect that the Continental policy contained major medical coverage"; that "Warner had no reason to believe that one or the other agent was mistaken as to the nature of the policy he was encouraged to make application for"; that "Warner was entitled to rely on Snow" and "that Snow's misrepresentations and actions were binding on Continental. Ibid.

The Court found that there was no merit to "Continental's suggestion that Warner is now estopped from reforming the policy because he neglected to read it"; that "[a]lthough some courts are contra, the better view, and the majority view in our opinion, is that an insured can assume, without reading his policy, that it conforms to his agreement with the soliciting agent" and that "acceptance by the insured of a policy without reading it does not preclude the reformation." Ibid. (emphasis added)

In Business Interiors, Inc. v. The Aetna Casualty and Surety Company, No. 83-1028, slip op. at 7, (10th Cir. Dec. 28, 1984) the Court stated that "[i]t has long been the law in Oklahoma that an insured's failure to promptly examine a policy and discover departure from an insurance agent's assurances does not defeat reformation of the policy." (citing Commercial Casualty Insurance Co. v. Varner, 16P.2d 118 (Okla.1932) "followed by Warner v. Continental Casualty Co., 534 P.2d 695 (Okla. App. 1975)." The Court further held that "[u]nder Oklahoma law, an insured has no duty to read his written policy and notice discrepancies between it and previous representations of a soliciting agent." (citing Warner, Id. at 699) Ibid.

The issue addressed by the Court in Business Interiors was "whether the dishonesty coverage should be reformed to $30,000 in conformity with the representations of Aetna's agent." Id. at 6. It was undisputed "that Aetna's agent, Barton, represented that coverage for employee dishonesty was $30,000, not the $10,000 listed in the written policy" and that "Barton himself believed that he was selling a policy for $30,000." Ibid.

In the instant case Plaintiff read and completed the Application For Membership which did not include Major Medical coverage. He read the Membership Policy, which did not contain provisions for Major Medical coverage. He stated in his deposition and affidavit that he wanted and needed Major Medical coverage; that he communicated that desire to Defendant's employee, and was assured by the employee that he could obtain Major Medical coverage and would be sent a proper form to complete and return for such coverage.[6]

The Court concludes that neither Warner nor Business Interiors are applicable to the instant case. In both Warner and Business Interiors the insured did not read the written policy but relied on the representations of the soliciting agent who believed, although mistakenly so, that the policy he was selling included the coverage as represented to the insured.

---

6 On a motion for summary judgment the Court must accept as true Plaintiff's statement with respect to the alleged conversation with Defendant's employee. However, following this alleged conversation the undisputed evidence shows that none of the documents sent to Plaintiff by Defendant, including, inter alia, the Application For Membership, the Membership Policy and Membership Identification Card contained any provisions for, or references to, Major Medical coverage.

Whereas, here it is undisputed that Plaintiff read his policy which described specifically his coverage under the policy, which did not include coverage for Major Medical, nor did it make any reference to Major Medical coverage.

In Evans, Supra, the Court stated:

> An action seeking reformation proceeds from the premise that the parties came to an understanding but, when it was reduced to writing, some provision was omitted from the contract or a mistake was inserted through mutual mistake [or] fraud. Agee v. Traveler's Indemnity Co., 264 F.Supp. 322, 326 (W.D. Okla. 1967), aff'd, 396 F.2d 57 (10th Cir. 1968). No reformation may be had unless there was a prior agreement to which the contract as written can be reformed. Id.; Tuloma Pipe & Supply Co. v. Townsend, 182 Okla. 321, 77 P.2d 535, 537 (1938); Douglas v. Douglas, 176 Okla. 378, 56 P.2d 362, 363, 369 (1936). An agreement must have been reached; a court will not reform an insurance contract to "conform to the parties' negotiations or haphazardly expressed intentions." Industrial Indemnity Co. v. Aetna Casualty & Surety Co., 465 F.2d 934, 938 (9th Cir. 1972). "Even in situations where obvious mistakes have been made, courts will not rewrite the contract . . . but will only enforce the legal obligations of the parties according to their original agreement." Mutual of Omaha Insurance Co. v. Russell, 402 F.2d 339, 344 (10th Cir. 1968), cert. denied, 394 U.S. 973 (1969). Because of the court's traditional reluctance to disturb the terms of a written instrument presumably agreed to by both parties involved, a party seeking reformation under Oklahoma law must show by proof that is clear, unequivocal, and decisive, and more than a mere preponderance, that a prior agreement existed and that the contract does not reflect that agreement because of fraud or mistake. Agee, 264 F.Supp. at 326; Douglas, 56 P.2d at 364, 369. The evidence must be sufficient to take the question out of the range of reasonable controversy. Agee, 264 F.Supp. at 326. Douglas, 56 P.2d at 364, 369. Even where a prior agreement is established, the party seeking reformation must also prove that the written instrument differs because of mutual mistake or fraud.

Id. at 1179. The Court further stated:

> Even if Dresser intended to obtain such coverage, its unilateral understanding does not provide the mutual agreement and mutual mistake required to support reformation. (footnote omitted) As one insurance authority has said with regard to reformation of a policy:

> "A mistake on one side only would be insufficient, such as where the policy accurately expressed the intent of the insurer, even though it did not express the intent of the insured. And the insured's lack of knowledge or ignorance of the coverage actually extended to him by the insurance policy has not been considered a mistake of fact so as to permit reformation."
>
> 13A J. Appleman & J. Appleman, Insurance Law and Practice ¶ 7608 at 308-09 (1976) (footnotes omitted).

Id. at 1181.

The Court concludes that Plaintiff's claim "that he is entitled to reformation of the contract of insurance issued him by Defendant" is not supported by the facts or the law in this case.

7. Plaintiff's final contention is "that the Defendant failed to adequately put him on notice that the coverage he was receiving was less than the coverage he had with Blue Cross and Blue Shield of Iowa." (Plaintiff's Brief at 20) Plaintiff urges that "[b]ecause of the relationship between Blue Cross Blue Shield of Oklahoma and Blue Cross Blue Shield of Iowa ... he is entitled to have the same kind of coverage with Defendant he had with Iowa when he made the transfer to Defendant." In support of this contention Plaintiff relies on the fact "that both Blue Cross Blue Shield of Iowa and Blue Cross Blue Shield of Oklahoma are admittedly members of the Blue Cross Blue Shield Associations and that they have an inter-transfer plan." Plaintiff quotes the following language from Pearl Assur. Company v. School District #1, et al., 212 F.2d 778 (10th Cir. 1954):

> While the eleven policies in suit, which were issued subsequent to the completion of the gymnasium, were technically new insurance contracts, the agents of the insurance companies and the district clearly intended them to be renewals of the policies which immediately

> preceded them, and that fact was indicated by endorsement on such eleven policies in suit. Such policies were a part of a continuous insurance coverage. When a renewal policy is issued, it is presumed, unless a contrary intention appears, that the parties intended to adopt in the renewal policy, the terms, conditions and coverage of the expiring policies.

(Plaintiff's Brief at 20). Pearl Assur. Company is not relevant to the facts in the instant case. The record does not support Plaintiff's contention that because of the relationship between Defendant and Blue Cross and Blue Shield of Iowa, his agreement with Defendant was a renewal of his Iowa policy which included Major Medical coverage.

Plaintiff further "submits" that "the identification card issued him by Blue Cross Blue Shield of Oklahoma contained the effective date that he began his coverage with Blue Cross Blue Shield of Iowa and that it is a question of fact as to whether or not it was in effect a renewal policy and question of fact as to whether or not it was the intentions of the parties to give Plaintiff the identical coverage to the Iowa plan and also a question of fact as to whether or not Plaintiff was sufficiently put on notice that he was not receiving such identical coverage." (Id. at 20-21)

For the reasons stated by the Court in Conclusions of Law 4, 5 and 6, the Court concludes that Plaintiff's contentions that there are disputed issues of fact as to the coverage provided in his membership agreement with Blue Cross and Blue Shield of Oklahoma is without merit.

It is therefore Ordered that Defendant's Motion for Summary Judgment is sustained and judgment will accordingly be entered for the Defendant and against the Plaintiff.[7]

Dated this 15th day of February, 1985.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

---

7 The above Findings of Fact, Conclusions of Law and Order, resulting from a de novo review, constitute an approval of the recommendation of Magistrate Robert S. Rizley that the Defendants' Motion for Summary Judgment be sustained. The attached Exhibit "B" reflects the agreement of the parties concerning the review of the Magistrate's recommendation.

EXHIBIT "A"

NON-GROUP MEMBERSHIP AGREEMENT

THIS IS YOUR NON-GROUP AGREEMENT OF HEALTH CARE AND SERVICES BENEFITS PROVIDED TO YOU BY BLUE CROSS AND BLUE SHIELD OF OKLAHOMA. PLEASE READ IT NOW AS IT IS VALUABLE IN ASSISTING YOU TO FULLY UNDERSTAND THE BENEFITS HEREIN PROVIDED.

. . .

GENERAL: IN CONSIDERATION of the Application and payment of dues by the Member covered hereunder, Blue Cross and Blue Shield of Oklahoma (the Plan) agrees to make available to the Member and any eligible Subscriber hereunder, a prepaid program of health care benefits as provided, subject to and administered in accordance with this Membership Agreement. THE WHOLE AGREEMENT HEREIN consists of the Application, the Identification Card and this Membership Agreement, including Provisions, Terms and Conditions of Membership, Section I, and Schedules of Benefits, Section II.

. . .

SECTION I - PROVISIONS, TERMS AND CONDITIONS OF MEMBERSHIP

ARTICLE I. - DEFINITIONS

A. PLAN: Blue Cross and Blue Shield of Oklahoma is herein called "Plan."

B. IDENTIFICATION CARD: An Identification Card will be issued to the Member bearing the Member's name, type of Membership Agreement Number, Group Number and Effective Date. The Identification Card and the information printed hereon is hereby made a part of this Membership Agreement.

. . .

M. BENEFITS: "Benefits" means the services, payment for services, reimbursement and indemnification of any kind which a Subscriber will receive from and through the Plan under Section II of this Agreement and subject to the general provisions of this Agreement for claims submitted for the cost of health Care and Services provided to a Subscriber.

. . .

ARTICLE II BENEFITS PROVIDED

A. Basic Health Care benefits provided to the Subscriber under the provisions of this Membership Agreement are set forth in Section II, "Schedules of Benefits."

B. Additional or supplemental Benefits, if any, to the Basic Benefits which the Subscriber will receive as set forth in Paragraph A above, shall be as set forth and provided in

Section II, "Schedule of Benefits."

. . .

SECTION II - NON-GROUP MEMBERSHIP AGREEMENT . . .

. . .

SCHEDULE A - BASIC HOSPITAL BENEFITS

. . .

SCHEDULE B - BASIC PHYSICIANS AND MEDICAL CARE AND SERVICES BENEFITS

. . .

SCHEDULE C - CATASTROPHIC ILLNESS

(EXTENDED BENEFITS)

. . .

EXHIBIT "B"

United States Magistrate

United States District Court
Northern District of Oklahoma
United States Courthouse
Tulsa, Oklahoma 74103

Robert S. Rizley
Magistrate

918-581-7976

January 16, 1985

Mr. Hack Welch
Attorney at Law
P. O. Box "L"
Hugo, OK 74743

Mr. E. Bryan Henson
Attorney at Law
502 West Sixth Street
Tulsa, OK 74119

Re: Forrest Robinson v. Group Health Service of Oklahoma, Inc., No. 84-C-351-B

Gentlemen:

The following Minute Order has been entered in the captioned case on this date:

> It is recommended that Defendant's Motion for Summary Judgment be sustained. Plaintiff and Defendant have been notified of the Magistrate's recommendation by telephone this date. Plaintiff objects to the recommendation of the Magistrate. Plaintiff and Defendant have agreed that the Court may consider the Motion for Summary Judgment de novo on the briefs that have been filed in support of and in opposition to the Motion for Summary Judgment and have waived their rights to the rules of this Court requiring written findings and recommendations of the Magistrate and the ten day period within which to file objections to such findings and recommendations.

Very truly yours,

Robert S. Rizley

RSR:kt

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 15 1985

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
GILDA J. SMITH,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 84-C-1015-E

AGREED JUDGMENT

This matter comes on for consideration this 15th day of February, 1984, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through James E. Pohl, Assistant United States Attorney, and the Defendant, Gilda J. Smith, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that Defendant, Gilda J. Smith, was served with Summons and Complaint on December 28, 1984. The Defendant has filed an Answer and has agreed that she is indebted to the Plaintiff in the amount of $394.00, plus the accrued interest of $836.49 as of November 19, 1984, plus interest at 7 percent per annum until the date of this Judgment, plus interest at the legal rate from the date of this Judgment until paid.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover Judgment against the Defendant, Gilda J. Smith, for the principal sum of $394.00, plus the accrued interest of $836.49 as of November 19, 1984, plus

interest at 7 percent per annum until the date of this Judgment, plus interest at the legal rate from the date of this Judgment until paid.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

JAMES E. POHL
Assistant U.S. Attorney

GILDA J. SMITH

Entitled

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 15 1985

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA, Plaintiff, vs. GERALD P. VON ACH and MARY L. VON ACH, husband and wife; THE BANK OF WYANDOTTE; COUNTY TREASURER, Ottawa County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Ottawa County, Oklahoma, Defendants.	)	CIVIL ACTION NO. 84-C-939-E

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 15th day of February 1985. Plaintiff appears by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney; the Defendant, The Bank of Wyandotte, appears by Robert G. Haney; the Defendants, County Treasurer, Ottawa County, Oklahoma, and Board of County Commissioners, Ottawa County, Oklahoma, appear by Morland T. Barton, Assistant District Attorney, Ottawa County, Oklahoma; and the Defendants, Gerald P. Von Ach and Mary L. Von Ach, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Gerald P. Von Ach, acknowledged receipt of Summons and Complaint on December 3, 1984; that the Defendant, Mary L. Von Ach, acknowledged receipt of Summons and Complaint on December 3, 1984; that the Defendant,

The Bank of Wyandotte, acknowledged receipt of Summons and Complaint on December 4, 1984; that the Defendants, County Treasurer, Ottawa County, Oklahoma, and Board of County Commissioners, Ottawa County, Oklahoma, acknowledged receipt of Summons and Complaint on December 27, 1984. It appears that the Defendant, The Bank of Wyandotte has filed its Answer on December 14, 1984; that the Defendants, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, have filed their Answers on January 21, 1985; and that the Defendants, Gerald P. Von Ach and Mary L. Von Ach, have failed to answer and their default has been entered by the Clerk of this Court on January 4, 1985.

The Court further finds that this is a suit based upon a certain promissory note for foreclosure of a real estate mortgage securing said promissory note upon the following described real property located in Ottawa County, Oklahoma, within the Northern Judicial District of Oklahoma:

> A tract of land in the SE¼ of the SE¼ of Section 3, Township 26 North, Range 24 East of the Indian Meridian, Ottawa County, Oklahoma, more particularly described as follows, to-wit: Commencing at the Northwest corner of the SE¼ of the SE¼; thence East 420.6 feet; thence S 16° 52' W 265.6 feet; thence East 285.0 feet to the point of beginning; thence North at a right angle 100.00 feet; thence East at a right angle 125.00 feet; thence South at a right angle 100.00 feet; thence West at a right angle 125.00 feet to the point of beginning, containing 0.29 acres, more or less. (Also described as the E½ of Lot 22, and all of Lots 23 and 24 of the Sunshine Valley unrecorded plat.)

That on December 17, 1979, Gerald P. Von Ach and Mary L. Von Ach executed and delivered to the United States of America, acting through the Administrator of Veterans' Affairs, their promissory note in the amount of $22,500.00, payable in monthly installments, with interest thereon at the rate of ten (10) percent per annum.

That as security for the payment of the above-described note, Gerald P. Von Ach and Mary L. Von Ach executed and delivered to the United States of America, acting through the Administrator of Veterans' Affairs, a real estate mortgage dated December 17, 1979, covering the described property. Said mortgage was recorded on December 26, 1979, in Book 395, Page 842, in the records of Ottawa County, Oklahoma.

The Court further finds that the Defendants, Gerald P. Von Ach and Mary L. Von Ach, made default under the terms of the aforesaid promissory note and mortgage by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above named Defendants are indebted to the Plaintiff in the sum of $21,569.17, plus interest at the rate of 10 percent per annum from April 1, 1984 until judgment, plus interest thereafter at the legal rate until paid, plus the costs of this action accrued and accruing.

The Court further finds that the Defendant, the Bank of Wyandotte, has a lien on the subject property by virtue of a judgment against the Defendants, Gerald P. Von Ach and Mary L. Von Ach, dated February 10, 1984, in the District Court of

Ottawa County, Oklahoma, Case No. C-83-514, and recorded on July 19, 1984, in Book 434, Page 344, in the records of Ottawa County, Oklahoma, in the amount of $3,852.61, plus interest, plus an attorney's fee of $570.00, plus costs. This judgment lien of the Defendant, The Bank of Wyandotte, is junior and inferior to the first mortgage lien of Plaintiff.

The Court further finds that there are currently no ad valorem or personal property taxes due relating to the property which is the subject matter of this action, and that there exist no liens on the subject property in favor of the Defendants, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff, United States of America, have and recover judgment against the Defendants, Gerald P. Von Ach and Mary L. Von Ach, in the principal amount of $21,569.17, plus interest at the rate of 10 percent per annum from April 1, 1984 until judgment, plus interest thereafter at the current legal rate of 9.17 percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant, The Bank of Wyandotte, has a second lien on the subject property in the amount of $3,852.61, plus interest, plus an attorney's fee of $570.00, plus costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon failure of the Defendants, Gerald P. Von Ach, and Mary L. Von Ach, to satisfy the money judgment of the Plaintiff herein, an

Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma commanding him to advertise and sell with appraisement the real property herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including cost of the sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff; and

Third:

In payment of the judgment lien of the Defendant, The Bank of Wyandotte.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, the Defendants and all persons claiming under them since the filing of this Complaint,

be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney

PETER BERNHARDT
Assistant United States Attorney

MORLAND T. BARTON, Assistant District Attorney, Ottawa, Oklahoma, Attorney for County Treasurer, and Board of County Commissioners, Ottawa County, Oklahoma

ROBERT G. HANEY
Attorney for The Bank of Wyandotte

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEB 15 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

RICK HALL MUSIC, OCTAVE MUSIC PUBLISHING CORP., GLADYS MUSIC AND MCA, INC.,	)	
Plaintiffs,	)	
vs.	)	No. 84-C-503-C
ELBERT DEAN YECKLEY AND MARY DONAHEY,	)	
Defendants.	)	

ORDER OF DISMISSAL WITH PREJUDICE

ON this 15 day of Feb, 1985, upon written application of the parties for an order of dismissal with prejudice of the Complaint and all causes of action, the Court, having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss the Complaint with prejudice to any future action, and the Court, being fully advised in the premises, finds that said Complaint should be dismissed; it is therefore,

ORDERED, ADJUDGED AND DECREED BY THE COURT that the Complaint and all causes of action of the Plaintiff filed herein against the Defendant be and the same are hereby dismissed with prejudice to any future action.

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

APPROVED:

JANET REASOR
GABLE & GOTWALS
20th Floor, Fourth National
Bank Building
Tulsa, Oklahoma 74119
(918) 582-9201

OF COUNSEL:

JACKSON, WALKER, WINSTEAD,
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43rd Floor, Interfirst One
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Dallas, Texas 75202

ATTORNEYS FOR PLAINTIFFS

WILLIAM EDMISON
FEAMSTER, NIX & EDMISON, P.A.
Suite 406
Petroleum Club Building
Tulsa, Oklahoma 74119

ATTORNEYS FOR DEFENDANTS

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 15 1985

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
MARGIE PARTEE,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 84-C-995-E

DEFAULT JUDGMENT

This matter comes on for consideration this 15th day of February, 1985, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Margie Partee, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Margie Partee, acknowledged receipt of Summons and Complaint on January 2, 1985. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Margie Partee, for the principal sum of $5,015.40, plus interest thereafter at the current legal rate of 9.17 percent per annum from the date of judgment until paid, plus the costs of this action.

UNITED STATES DISTRICT JUDGE

6

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FORREST ROBINSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	NO. 84-C-351-B
	)	
GROUP HEALTH SERVICE OF OKLAHOMA, INC., an Oklahoma Corporation, d/b/a BLUE CROSS AND BLUE SHIELD OF OKLAHOMA,	)	
	)	
Defendant.	)	

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law and Order Sustaining Defendant's Motion for Summary Judgment entered herein this date, IT IS HEREBY ADJUDGED the defendant, Group Health Service of Oklahoma, Inc., an Oklahoma corporation, d/b/a Blue Cross and Blue Shield of Oklahoma, is to have judgment on the plaintiff Forrest Robinson's claim herein, the plaintiff is to take nothing from the defendant thereon, and plaintiff's claim is hereby dismissed with costs to the plaintiff.

ENTERED this 15th day of February, 1985.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TOMMY H FARGUSON AND ELLEN S. FARGUSON,

Plaintiffs,

vs.

THELMA LORENE HAWKINS,

Defendant.

No. 84-C-953-E

O R D E R

The Court has before it the motion of the Defendant, Thelma Lorene Hawkins, for Summary Judgment or in the alternative to dismiss to which the Plaintiff, Tommy H. and Ellen S. Farguson, have not replied.

On January 5, 1983, Plaintiff executed a form W-4, Employee's Withholding Allowance Certificate, after having crossed out the words, "under penalty of perjury", in the form's signature oath, declaring that Plaintiff was "exempt" from withholding. Under the tax law, 26 U.S.C. § 3402, an employer is not required to deduct and withhold any tax on wages if there is in effect at that time a withholding allowance certificate furnished to the employer by the employee certifying that the employee anticipates he will incur no liability in the current taxable year. In compliance with 26 C.F.R. § 31.3402(f)(2)-1(g)(1982), which requires an employer to submit to the Internal Revenue Service for review all Forms W-4 which claim an exemption from all tax action, Defendant's employer sent the form W-4 to

the IRS.

On or about September 28, 1983, Defendant's employer received notification from the IRS that the form W-4 tendered by the Plaintiff should be disregarded and that Defendant's employer should commence withholding income tax from Plaintiff's salary as if she was a married tax payer claiming one withholding allowance (M-1 status). Such notification is made by the IRS when it has found the withholding allowance certificate contains a materially incorrect statement, or when it finds, after a written request to an employee for verification of the statements, that it lacks sufficient information to determine whether the information is correct. The employer is then required to withhold amounts from the employee on the basis of the maximum number specified on the written notice received from the IRS. 26 C.F.R. § 31.3402(f)(1)-1(g)(5)(1982).

On or about March 19, 1984, Defendant's employer received a form 668-W, Notice of Levy on Wages, Salary and other Income, for payment of unpaid balance of $514.32, 1040 unpaid tax assessment for 1982, interest and late penalty for plaintiff, Ellen S. Farguson. Pursuant to the provisions of 26 U.S.C. §§ 6331, 6332 and 6334, under which authority the levy was made upon Plaintiff's wages from the Defendant Hawkins' employer, the employer instructed Hawkins to initiate the required withholding. The Defendant and the employer complied with the levy and the appropriate amount was withheld from the Plaintiff's paychecks and paid to the United States.

On or about April 26, 1984, the Defendant's employer

received a form 668-R, Release of Levy on Wages, Salary and other Income, which released all wages payable by the employer to the Plaintiff from the levy in accordance with 26 U.S.C. § 6343.

On April 19, 1984, Plaintiffs filed Request for Writ of "Prohibition and Caveat" and "Jury action at Law" for damages in the District Court of the State of Oklahoma, Tulsa County, which was removed on petition by Defendant to the United States District Court for the Northern District of Oklahoma. That action, Tommy H. Farguson and Ellen S. Farguson v. Thelma Lorene Hawkins, 84-C-363-C, was dismissed for want of prosecution.

On October 29, 1984 Plaintiffs filed this action in the District Court of the State of Oklahoma, Tulsa County, which was removed to the United States District Court for the Northern District of Oklahoma.

In the complaint, Plaintiffs seek actual damages and punitive damages in the amount of $250,000.00 against the Defendant for having conspired with the IRS, violating her civil rights by complying with the IRS levy and violating her due process and equal protection rights under the 4th, 5th, 7th and 14th Amendments.

After a thorough review of all the pleadings submitted by the parties, it is clear that Plaintiffs' complaint, although styled an action in regard to right of property, violation of civil rights and conspiracy, is essentially an action to hold the Defendant liable for withholding monies from wages under 26 U.S.C. §§ 6331(e)(1) and 6332(a), (c)(1). The law provides that

"any person in possession of ... property or rights to property subject to levy upon which levy has been made who, upon demand by the Secretary, surrenders such property or rights to property ... shall be discharged from any obligation or liability to the delinquent taxpayer ..." 26 U.S.C. § 6332(d).

The Plaintiffs have alleged that withholding from wages in accordance with the IRS levy is a deprivation of property without due process of law. However, it is well settled in this circuit that federal income tax withholding does not result in the taking of property without due process of law. United States v. Smith, 484 F.2d 8 (10th Cir. 1973), cert denied, 84 S.Ct. 1566 (1974); Campbell v. Amax Coal Co., 610 F.2d 701 (10th Cir. 1979); Robinson v. A & M Electric, Inc., 713 F.2d 608 (10th Cir. 1983). The due process clause is not a limitation upon the taxing power conferred upon Conress by the constitution. The due process clause could only conceivably come into play "if the act complained of was so arbitrary as to compel the conclusion that it was not really taxation but the confiscation of property." United States v. Smith, supra at page 11. Withholding provisions of the present statutes are a legitimate exercise of Congress' power to make all laws "necessary and proper" for the taxing of income.

In addition, courts have held that there is no violation of due process where the IRS has informed the taxpayer of a procedure by which he can appeal or correct their determination. See Smith v. Heller, 80-1 USTC paragraph 9458 (D.

Oregon 1979); Salisbury v. Haller, 45 A.f.T.R.2d 80-599 (D. Ore. 1979).

The Defendant asks leave of Court to apply for an award of attorney fees for the defense of this action. All applications for attorney's fees must be filed in accordance with Rule 6(f) of the Rules of the United States District Court for the Northern District of Oklahoma to be considered by this Court.

IT IS THEREFORE ORDERED AND ADJUDGED that the Defendant's motion to dismiss be, and the same is hereby granted for failure to state a claim upon which relief may be granted.

ORDERED this 12th day of February, 1985.

James O. Ellison

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JACK MEADORS and JOHN J. MEADORS, Plaintiffs, v. THE UNITED STATES OF AMERICA, UNITED STATES POSTAL SERVICE, Defendant.	)	No. 84-C-73-BT

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law entered this date, Judgment is hereby entered in favor of the defendant, The United States of America, United States Postal Service, and against the plaintiffs, Jack Meadors and John J. Meadors, and said action is hereby dismissed with costs to the plaintiffs.

ENTERED this 14 day of February, 1985.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

COMPRESSOR SYSTEMS, INC., Plaintiff, vs. RESOURCES INTERNATIONAL, LTD., GREAT SOUTHERN ENTERPRISES, INC. and KANOKLA ENERGY CORPORATION, Defendants.	)	No. 84-709-C

FILED
IN OPEN COURT

FEB 13 1985

Jack C. Silver, Clerk
U.S. DISTRICT COURT

DEFAULT JUDGMENT

The above-entitled cause coming on for hearing in open Court, on the Motion and Affidavit of Plaintiff for an Order adjudging the Defendant, Resources International, Ltd., to be in default for want of appearance or answer in any form in said action, on all the records and files herein, Plaintiff appearing by Clifton D. Naifeh, its attorney of record, and the Defendant, Resources International, Ltd., appearing not at all, either in person or by attorney, or by Motion or any pleading in said action; and it appearing to the Court that the Defendant, Resources International, Ltd., has been duly and legally served with summons by certified mail, return receipt requested, in this action, and that due proof thereof has been filed, and that more than twenty (20) days have elapsed since the date of said service and said Motion having been duly considered by the Court and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that the Defendant, Resources International, Ltd., be, and it is hereby, adjudged to be in default in this action.

IT IS FURTHER ORDERED that judgment in favor of Compressor Systems, Inc., Plaintiff, and against Resources International, Ltd., Defendant, shall enter in accordance with the prayer of Plaintiff's Complaint.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff, Compressor Systems, Inc., have and recover from Defendant, Resources International,

Ltd., judgment in the sum of $36,711.00, with interest thereon at the rate of ten percent (10%) per annum from October 1, 1982, until paid, together with costs and disbursements incurred in this action amounting to the sum of $80.00 and a judgment for reasonable attorney's fees in the amount of 5 000 00.

DATED this 13 day of Feb, 1985.

(Signed) H Dale Cook
JUDGE

CLIFTON D. NAIFEH - OBA #6568
470 Sooner Federal Building
Norman, Oklahoma 73069
(405) 329-2732

ATTORNEY FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

DAVID W. JONES, Plaintiff,	)	
vs.	)	No. 84-C-1008-C
BLUE CIRCLE, INC., Defendant.	)	

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

IT IS SO ORDERED this 13th day of February, 1985.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

W. L. AUSTIN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 84-C-463-E
	)	
LARRY MEACHUM,	)	
	)	
Defendant.	)	

O R D E R

NOW before the Court is the motion of Defendant to dismiss. In support of the motion, Defendant asserts that there has been no "deprivation of certain personal property without due process of law," and the Plantiff has failed to state a cause of action under 42 U.S.C. § 1983. In Parrott v. Taylor, 451 U.S. 526, 101 S.Ct. 1908 (1981), the Court identified two essential elements to a § 1983 action:

> 1) Whether the conduct complained of was committed by a person acting under color of state law; and
>
> 2) Whether this conduct deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States. 451 U.S. at 537, 101 S.Ct. at 1913.

The Plaintiff alleges that certain property was taken without his consent and that the property was wrongfully seized, held and detained by the Defendant. The Court recognizes the argument advanced by Plaintiff that "[a]ll well pleaded allegations of the [plaintiff's] complaint must be taken as true ... must be liberally construed, with the benefit of all proper inferences being given to the plaintiff ..." Leeward Petroleum Ltd. v. Mene

Grande Oil Co., 415 F.Supp. 158 (D.C. Del. 1976); Accord Hughes v. Rowe, 449 U.S. 5, 101 S.Ct. 173 (1980). The plaintiff's allegations taken in the best light could constitute a deprivation of his property. However, the alleged loss due to the acts of the Department of Corrections employees, under color of state law, and subsequent deprivation standing alone does not establish a violation of the Fourteenth Amendment.

> Nothing in the amendment protects against all deprivation of life, liberty or property by the State. The Fourteenth Amendment protects only against deprivations without due process of law. (citation omitted). Our inquiry therefore must focus on whether the [plaintiff] has suffered a deprivation without due process of law. In particular we must decide whether the tort remedies which the State provides as a means of redress for property deprivations satisfy the requirements of procedural due process. Parratt v. Taylor, 451 U.S. 526, 537, 101 S.Ct. 1908, 1914 (1981).

The application of the Parratt ruling is limited to those instances in which there exists the necessity of quick action by the State or the impracticality of providing "meaningful predeprivation process". 451 U.S. at 539, 101 S.Ct. at 1914. The plaintiff's complaint and the facts of this case establish the impracticability of meaningful predeprivation process. In extending the holding of Parratt, which was limited to negligent deprivation of property, to the intentional deprivation of property, the Court in Hudson v. Palmer, _____ U.S. _____, 104 S.Ct. 3194, (1984) held:

> [A]n unauthorized inentional deprivation of property by a state employee does not constitute a violation of the procedural requirements of the due process clause of the Fourteenth Amendment if a meaningful

> postdeprivation remedy for the loss is available. For intentional, as for negligent deprivation of property by state employees, the State's action is not complete until and unless it provides or refuses to provide a suitable postdeprivation remedy. Id. at 3204.

In both Parratt and Hudson, there was a specific state statute which provided a remedy to prisoners who suffered alleged deprivation without due process. Oklahoma, likewise, provides a statutory remedy against Department of Correction employees. Title 57 O.S. § 553, as construed and aplied by the Oklahoma Supreme Court, provides that the State of Oklahoma has waived its defense of sovereign immunity to tort action as to the Department of Corrections to the extent of the coverage, force and effect of any such insurance or bond obtained pursuant to that statute. Nichols v. Department of Corrections, 631 P.2d 746 (Okla. 1981). Therefore the State of Oklahoma provides a remedy to persons who believe they have suffered a tortious loss at the hands of the State and the remedy provided can fully compensate the plaintiff for the property loss set forth in his complaint.

Plaintiff cites Logan v. Zimmerman Brush Co., 455 U.S. 422, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982) to support his contention that postdeprivation remedies are not adequate when there has been a departure from an established procedure. In Logan, an employee filed a charge with the Illinois Fair Employment Practices Commission alleging that he had been unlawfully terminated because of a physical handicap. Upon such filing, the Commission was obligated to convene a fact-finding conference within 120 days. When the Commission failed to meet the statutorily-mandated time period, the defenant-employer advanced

such failure as a bar against the plaintiff's right of action. Therefore, it was the State scheme which deprived the Plaintiff of his right to use the Fair Employment Practice Act's adjudicatory process. In Logan, in contrast to Hudson, "it is the state system itself that distroys a complainant's property interest, by operation of law, whenever the Commission fails to convene a timely conference." Logan v. Zimmerman, 455 U.S. 420, 439, S.Ct. 1148, 1158 (1982). (Distinguished in Hudson, _____ U.S. _____, 104 S.Ct. at 3203).

In this case, failure to follow the "inventory procedure" has not destroyed the Plaintiff's right to pursue a claim for damages under Title 57 O.S. § 553.

IT IS THEREFORE ORDERED AND ADJUDGED that the Motion of Defendants to dismiss be, and the same is hereby granted.

IT IS FURTHER ORDERED that this action be, and the same hereby is dismissed with prejudice.

ORDERED this 12TH day of February, 1985.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BETTY ABSHIRE, Plaintiff,	)	
vs.	)	No. 84-614-E
MICHAEL PENNY, et al., Defendants.	)	

O R D E R

Upon failure of the Plaintiff to obtain service upon Defendants pursuant to the Order of this Court, and for failure to appear at the status conference scheduled by the Court on the 30th day of January, 1985,

IT IS THEREFORE ORDERED that Plaintiff's complaint be dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

ORDERED this 12TH day of February, 1985.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOHN AND CORA LEE MONTGOMERY,

Plaintiff,

vs.

AMERICAN GENERAL FIRE & CASUALTY COMPANY,

Defendant.

No. 83-C-830-E

FILED
FEB 12 1985
Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

FOR GOOD CAUSE SHOWN, upon application of plaintiffs, John and Cora Lee Montgomery, and their respective counsel of record, and defendant, American General Fire & Casualty Company, and its respective counsel of record, that a settlement of all of the issues in the above styled cause have been effected between the parties, the Court finds that said cause should be dismissed with prejudice, with each party bearing its respective costs and attorney fees.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Case No. 83-C-830-E be and is hereby dismissed with prejudice as to the filing of any future action between the parties, with each party bearing its own respective costs and attorney fees.

DATED this 12th day of February, 1985.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 12 1985

Jack C. Silver, Clerk
U. S. DISTRICT COURT

RANDALL TAYLOR and LINDA TAYLOR, Plaintiffs, vs. WAL-MART STORES, INC., a foreign corporation, Defendant, vs. BROOKFIELD ATHLETIC SHOE CO., INC., a foreign corporation, Defendant/Third Party Plaintiff, vs. YALE ENGINEERING CORPORATION, a foreign corporation, Defendant/Third Party Defendant.	No. 83-C-864-E

ORDER
OF DISMISSAL WITH PREJUDICE

NOW ON this 12 day of ~~January~~ Feb., 1985, after review of the STIPULATION FOR ORDER OF DISMISSAL WITH PREJUDICE, this Court finds that all of the pending causes of action in the above-styled and numbered case should be dismissed with prejudice to the refiling of same.

IT IS SO ORDERED.

/s/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MOHAWK OIL & GAS CORPORATION, an Oklahoma corporation, d/b/a M Oil and Gas Corporation,

Plaintiff

vs.

GORDON ASSOCIATES, a partnership and MARTIN KAIDEN, individually, and as general partner of Gordon Associates,

Defendants.

CIVIL ACTION
No. 82-C-955-E

STIPULATION

FILED

FEB 12 1985

Jack C. Silver, Clerk
U. S. DISTRICT COURT

IT IS HEREBY STIPULATED BETWEEN the undersigned counsel for the parties as follows:

1. Plaintiff's action against defendants is discontinued without costs, and with prejudice.

2. Plaintiff hereby consents to the entry of a judgment in defendants' favor and against plaintiff, on defendants' counter-claim, in the amount of $106,000, with interest at the rate of fifteen percent (15%) from the date of entry of said judgment.

Dated: June 30, 1984

HOWARD, LASORSA & WIDDOWS
Attorneys for Plaintiff
2642 East 21st Street
Tulsa, Oklahoma 74114
(918) 744-7440

PRYOR, CASHMAN, SHERMAN & FLYNN
Attorneys for Defendants
410 Park Avenue
New York, New York 10022
(212) 421-4100

SO ORDERED:

U. S. D. C.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NETWORK COMPUTER SYSTEMS, INC., an Oklahoma corporation,

Plaintiff,

vs.

NETWORK SYSTEMS CORPORATION, a Delaware corporation,

Defendant.

No. 83-C-980-E

JUDGMENT DISMISSING ACTION BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown within twenty (20) days that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

DATED this 12th day of February, 1985.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

RCH/sl
2-12-85

Entered

FILED

FEB 12 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED SERVICES AUTOMOBILE ASSOCIATION,	)	
Plaintiff,	)	
vs.	)	
JEFFERY SANDHOLM, FRANK A. SANDHOLM, and BETTY L. DOWLAND, now DOUGLAS,	)	
Defendants.	)	CASE NO. ~~C-84-73D~~ 85-C-112-B

DISMISSAL OF FRANK A. SANDHOLM

Comes now the plaintiff, United Services Automobile Association, and hereby dismisses without prejudice the Complaint in the above-entitled action as to the defendant, Frank A. Sandholm, who was erroneously sued, and reserves all of plaintiff's rights against defendants, Jeffery Sandholm and Betty L. Dowland now Douglas, who were properly sued herein.

DATED February 12, 1985.

ROGERS, HONN & ASSOCIATES,

By: _____

RICHARD C. HONN
117 East Fifth Street
Tulsa, Oklahoma 74103
Telephone: (918) 583-5111

Attorneys for Plaintiff

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the foregoing was deposited in the U. S. Mail this 12th day of February, 1985, addressed to Mr. Frank A. Sandholm, 123 Lakeview Drive, Mannford, Oklahoma 74044, and to James K. Secrest, 1515 East 71st Street, Tulsa, Oklahoma 74136, with postage thereon fully prepaid.

_____

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DRESSER INDUSTRIES, INC., A Delaware corporation,	)	
Plaintiff,	)	
vs.	)	No. 84-C-1024-E
SOUTHBROOK ENERGIES, INC., an Oklahoma corporation,	)	
Defendant.	)	

JUDGMENT OF DEFAULT

Defendant, Southbrook Energies, Inc., has been served with process. It has failed to appear and answer the Plaintiff's complaint filed herein. The default of Defendant, Southbrook Energies, Inc., has been entered. It appears from the Affidavit in Support of Entry of Judgment of Default that the Plaintiff is entitled to judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff recover from Defendant, Southbrook Energies, Inc., the sum of $11,941.95, plus 18% accrued interest up to and including the date of this judgment, plus interest accruing thereafter at the rate of 9.09% per annum until paid, a reasonable attorneys' fee to be set upon application, and the costs of this action.

ORDERED this 12th day of February, 1985.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ADAMS EXPLORATION COMPANY, an Oklahoma corporation,	)	
Plaintiff,	)	
-vs-	)	NO. 83-C-459-C
OFS TULSA CORP., an Oklahoma corporation; and OIL FIELD SYSTEMS CORP., a Delaware corporation,	)	
Defendants.	)	

STIPULATION OF DISMISSAL

The parties hereto, Adams Exploration Company, OFS Tulsa Corp., and Oil Field Systems Corporation stipulate and agree that all claims of the Plaintiff and the Counterclaim of the Defendant, OFS Tulsa, be dismissed with prejudice.

CHARLES R. COX
Barlow & Cox
111 West Fifth, Suite 1000
Tulsa, Oklahoma 74103
(918) 582-4775

Attorneys for Defendants

R. K. PEZOLD
Holliman, Langholz, Runnels & Dorwart
700 Holarud Building
10 East Third
Tulsa, Oklahoma 74103
(918) 584-1471

Attorneys for Plaintiff

Entered

OBA #5026

FILED

FEB 11 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

NATIONAL SURETY OF NEVADA, INC., a Nevada corporation, and DONALD RAY VINCENT,	)	
Plaintiffs,	)	
-vs-	)	No. 84-C-466-C
MARCUS EBENHACK and HARRIETT EBENHACK,	)	
Defendants.	)	

JOURNAL ENTRY OF JUDGMENT

On this 6th day of February, 1985, plaintiffs' Application for Judgment based upon Stipulations came on before the Court for hearing. The Court finds that in accordance with the stipulations of the parties that plaintiffs are entitled to a judgment against defendant Marcus Ebenhack on the first and second causes of action in the amount of $40,693.75. The Court further finds that plaintiffs are entitled to a judgment against defendant Harriett Ebenhack on the first cause of action in the amount of $40,963.75. That the defendants are jointly and severally liable for said judgments.

The Court further finds that plaintiffs' attorney is entitled to a reasonable attorney fee in the amount of $3,000.00 and the plaintiffs are entitled to recover court costs in the amount of $100.00 pursuant to the stipulations of the parties. The Court further finds that said judgment shall be paid at the rate of $1,000.00 per month with the first payment due on

February 15, 1985, and payments of like amounts on the 15th day of each month thereafter until said judgment is satisfied. That so long as said payments are made in a timely manner, plaintiffs are prohibited from execution or garnishment of defendants. That in the event that said payments are not made by the 15th day of each month, then the full amount becomes due and payable and plaintiffs may execute or garnish without further order of the Court. That said payments pursuant to the stipulations of the parties will be made through the trust account of defendants' attorneys, William Lewis and Vernon Smythe, with the payments being sent to plaintiffs' attorney Dennis King. That in the event that defendants' attorneys no longer represent the defendants, then in that event, said payments may be made by cashier check, cash or money order by the defendants directly to the plaintiffs' attorney Dennis King. That all payments must be received by plaintiffs' attorney by the 15th day of the month in which said payments are due in order to be considered timely.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the plaintiffs, National Surety of Nevada, a Nevada corporation, and Donald Ray Vincent, have and take judgment against the defendants, Marcus Ebenhack and Harriett Ebenhack, and each of them, in the amount of $40,693.75. Said amount to bear postjudgment interest at the rate of 9.09 % per anum until satisfied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiffs be awarded an attorney fee in the amount of $3,000.00 and court costs of $100.00 as a part of said judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said judgment shall be paid at the rate of $1,000.00 per month with the first payment being made on February 15, 1985, and like amounts on the 15th day of each month thereafter until said judgment is satisfied. That so long as the payments are made in a timely manner plaintiffs are prohibited from garnishment or execution on defendants and their assets. That in the event that the payments are not made in a timely manner then the whole amount becomes due and payable and plaintiffs are allowed to execute or garnish defendants and their assets without further order of the Court.

IT IS FURTHER ORDERED that said payments shall be made as described above.

s/H. DALE COOK
UNITED STATES DISTRICT COURT

APPROVED AS TO FORM:

DENNIS KING
Attorney for Plaintiffs

WILLIAM LEWIS
VERNON SMYTHE
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

TAURUS OIL CORPORATION, a Colorado corporation; and TAURUS DRILLING LIMITED 1980-III, a Colorado limited partnership,	)	
Plaintiffs,	)	
vs.	)	No. 82-C-984-C
L. G. WILLIAMS OIL COMPANY, an Oklahoma corporation; and L. G. WILLIAMS, an individual,	)	
Defendants.	)	

J U D G M E N T

Pursuant to the Order entered simultaneously herein, judgment is hereby entered in favor of plaintiffs TAURUS OIL CORPORATION, a Colorado corporation; and TAURUS DRILLING LIMITED 1980-III, a Colorado limited partnership, and against defendants L. G. WILLIAMS OIL COMPANY, an Oklahoma corporation; and L. G. WILLIAMS, an individual, in the amount of $25,505.42 on the unpaid principal balance, plus accrued interest in the amount of $10,628.75, plus interest accruing after December 1, 1984, at the rate of $9.90 per day.

In addition, the parties have stipulated that defendants are indebted to plaintiff in the amount of $5,000.00 in attorney fees, and costs, and judgment is entered for $5,000.00 in

attorney fees and costs, providing a proper Bill of Costs is submitted to and approved by the Clerk of this Court.

IT IS SO ORDERED this 8 day of February, 1985.

H. DALE COOK
Chief Judge, U. S. District Court

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FORD MOTOR CREDIT COMPANY, a foreign corporation,

Plaintiff,

vs.

DESMOND WARREN JORDAN, on his behalf and as Representative Underwriter of Those Underwriters Subscribing to Policy No. AS144/5467,

Defendant and Third-Party Plaintiff,

vs.

WINSLOW & ASSOCIATES, INC., an Oklahoma corporation,

Third-Party Defendant and Third-Party Plaintiff,

vs.

GRAHAM ROGERS, INC.,

Additional Third-Party Defendant,

vs.

KEVIN R. SHANK,

Additional Third-Party Defendant.

No. 83-C-993-E

ORDER OF DISMISSAL

Now on this 21st day of February, 1985, it appearing to the Court that this matter has been compromised and settled, this case is herewith dismissed without prejudice to Winslow & Associates, Inc., only, to the refiling of a future action.

H. DALE COOK
United States District Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:	)	
	)	
DALCO PETROLEUM CORPORATION, a Nevada corporation,	)	Case No. 83-01074
	)	
Debtor.	)	
	)	
BANK OF MONTREAL,	)	
	)	
Appellant,	)	
	)	
vs.	)	
	)	
DALCO PETROLEUM CORPORATION, a Nevada corporation,	)	Case No. 84-C-960E
	)	
Appellee.	)	

ORDER

Upon the motion of Appellant Bank of Montreal,

IT IS HEREBY ORDERED that this appeal is dismissed pursuant to Rule 8001(c) of the Bankruptcy Rules.

Mickey D Wilson

The Honorable Mickey D. Wilson
United States Bankruptcy Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

RICK BUTTS, An Individual Plaintiff, v. FLUOR MECHANICAL SERVICES, INC. and INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, AFL-CIO, Defendant.	)	Case No. 84-C-1020-E

NOTICE OF DISMISSAL

COMES NOW the Plaintiff and, pursuant to Rule 41 of the Federal Rules of Civil Procedure, hereby dismisses the above cause without prejudice as to Defendant International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO.

James A. Williamson
OBA #0195
1736 South Carson
Tulsa, Oklahoma 74119
(918) 587-7113

ATTORNEY FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC -8 1985

CLERK, U.S. DISTRICT COURT

FIRSTBANK FINANCIAL CORPORATION, a Massachusetts corporation, Plaintiff,	)	
vs.	)	No. 83-C-600-C
LYLE W. TURNER, Defendant.	)	

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This action was commenced by Firstbank Financial Corporation (FFC) against Lyle Turner demanding monetary relief pursuant to a guaranty agreement. The guaranty was executed as part of a $2,256,954.00 loan made by FFC to Bigheart Drilling Corporation, Inc. (Bigheart), pursuant to a contract relating to an oil drilling rig. Bigheart subsequently merged with MGF Drilling Company (MGF) who assumed payments under the terms of the contract. MGF later defaulted under the contract and FFC seeks a judgment against the guarantor in the deficiency amount of $7,605.73. The parties bring five basic issues before the Court. First, whether the merger of Bigheart with MGF exonerated Turner's guaranty. Second, whether the contract executed by Bigheart in favor of FFC is a conditional sales contract subject to the Uniform Commercial Code (UCC) or a leasing agreement.

Third, whether the release of MGF, as the principal debtor, after its merger with Bigheart, released the guarantor of his obligation under the guaranty agreement. Fourth, whether the giving, by MGF, of a $10,000.00 note which was subsequently in default should be applied as part of the proceeds paid by MGF for release of its obligation under contract with FFC. Fifth, the award of attorney fees, interest and costs.

The parties have agreed to submit this case to the Court upon stipulation of facts and they have informed the Court that no issue of factual dispute exists between the parties.

After considering the pleadings, briefs, exhibits, including the stipulation of facts submitted by the parties, together with oral arguments presented by counsel for the parties, and being fully advised in the premises, the Court enters the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Plaintiff is a Massachusetts corporation having its principal place of business at Boston, Massachusetts. The defendant Turner is a citizen and resident of the State of Oklahoma. Complete diversity of citizenship exists between the parties.

2. The original amount in controversy exceeded the sum of $10,000.00, exclusive of interest and costs.

3. On December 20, 1979, pursuant to a written agreement, plaintiff leased an oil drilling rig and related parts to Bigheart. By the terms of the agreement, Bigheart agreed to pay

the aggregate sum of $2,256,954.00 in 84 monthly installments of $26,868.50 each.

4. The 1979 agreement was guaranteed in a separate writing executed on the same day by defendant Turner and other individuals originally named as defendants in this action. The guaranty provided in pertinent part:

> (1) ... This Guaranty is an absolute, unconditional, and continuing guaranty of the full and punctual payment and performance by the Lessee of the Obligations and not of their collectibility only.
> (2) The Guarantor further agrees ... to pay to the Lessor ... all costs and expenses (including court costs and legal expenses) incurred or expended by the Lessor in connection with the enforcement of this Guaranty.
> (3) The obligations of the Guarantor under this Guaranty shall continue in full force and effect until the Lessor shall have received from the Guarantor written notice of the Guarantor's intention to discontinue this Guaranty.
> (4) ... The Guarantor gives to the Lessor full authority in its sole discretion to do any or all of the following things (a) extend credit ... (b) vary the terms and grant extensions or renewals ... (c) grant time, waiver and other indulgences ... (d) vary, exchange, release or discharge, wholly or partially, or delay in or abstain from perfecting and enforcing any security or guaranty or other means of obtaining payment of any of the obligations ... (f) release or discharge, wholly or partially, any endorser or guarantor, (g) compromise or make any settlement or other arrangement with the Lessee or any such other party...
> (5) If for any reason the Lessee has no legal existence, this Guaranty shall nevertheless be binding on the Guarantor to the same extent as if the Guarantor at all times had been the principal debtor on all such obligations....

5. On September 25, 1981, Bigheart was merged into MGF. Turner held 250 shares of Bigheart which he voted in favor of the merger. Pursuant to the Plan of Merger, he received 14,379 shares of MGF in exchange for his 250 shares of Bigheart.

6. September 22, 1981 FFC consented in writing to the merger of Bigheart into MGF.

7. MGF assumed the performance of the 1979 lease agreement and continued to make the rental payments up to and including March, 1983. Commencing April 1, 1983, MGF was in default and remained in default in the aggregate sum of $1,211,810.00 until this action was commenced.

8. On July 11, 1983, this action was filed against MGF and all of the individual guarantors, seeking judgment for the remaining balance of the lease payments and possession of the leased equipment.

9. On October 31, 1983, the plaintiff, MGF and its subsidiaries, and all of the original individual defendant-guarantors except defendant Turner executed an instrument in writing entitled "Accord Agreement" providing in part as follows:

> (1) The 1979 Lease Agreement was jointly and severally guaranteed by the Original Guarantors.
> (2) The Accord Agreement shall not release or diminish Turner's liabilities to FFC, Boston Leasing or the Original Guarantors.
> (3) At closing, (a) MGF Oil and MGF Drilling shall pay an aggregate $110,000.00 to FFC to be applied against the unpaid principal balance of the 1979 Leasing Agreement, and (b) MGF Oil shall issue and deliver a $10,000.00 note to FFC payable June 9, 1984.

(4) At closing, New Bigheart Corp. shall pay an aggregate $84,000.00 to FFC, said amount to be applied against the unpaid balance of the 1979 Leasing Agreement.
(5) At closing, New Bigheart Corp. to have the option to purchase the Leased property for the amount of $816,049.00.
(6) It was expressly stated that the release of MGF would not exonerate any of the Original Guarantors from liability with respect to the 1979 Leasing Agreement and default thereunder ...

10. Defendant Turner was given an opportunity to become a party to the Accord Agreement, which he declined.

11. After execution of the Accord Agreement, the Complaint was dismissed as to all parties except Turner, without prejudice, upon joint motion requesting such dismissal.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332.

2. Defendant Turner, as guarantor under the 1979 Agreement, was not exonerated by the merger of Bigheart into MGF. As guarantor, the defendant's "rights and liabilities are fixed by the contracts of guaranty." U.S. v. Newton Livestock Auction Market, Inc., 336 F.2d 673, 677 (10th Cir. 1964). Under the terms of the contract, defendant consented to "an absolute, unconditional and continuing guaranty". (¶1 Guaranty Agreement). His guaranty contract further provided that it would remain in full force and effect until the Guarantor notified FFC in writing of his intention to discontinue the guaranty. "A guaranty is deemed continuing if it contemplates a future course of dealing, not limited to a single transaction, for an indefinite period of

time." Rucker v. Republic Supply Company, 415 P.2d 951 (Okla. 1966). A continuing guaranty is deemed a repetition of the extension of credit so long as it is in force, and liability under a continuing guaranty will be deemed to have continued until revoked where it contains no express limitation as to duration of guarantor's responsibility. Id., 415 P.2d at 953. By the terms of the guaranty contract defendant was obligated to notify FFC, in writing, if he elected to discharge his guaranty at the time of merger of Bigheart into MGF. In neglecting to do so, the guaranty remained in force.

3. The defendant, as guarantor, was not exonerated by the merger of Bigheart into MGF since he implicitly consented to the merger by voting his 250 shares in favor and received 14,379 MGF shares in return. Under general guaranty law a merger of two corporations with the surviving corporation merely being a change in name or location without any change in the type of business, does not discharge the guarantor, especially where such change is participated in by the guarantor as stockholder, or the merger is not opposed by him. Folk v. Continental Can Co., 97 F.2d 322 (4th Cir. 1938). In oral arguments before the Court on January 22, 1985 the attorneys for the parties stipulated that Bigheart merged into MGF; defendant voted his shares in favor of the merger; defendant did not object, in writing, to the continuation of his guaranty commitment; and that MGF would conduct substantially the same business as Bigheart. Under these facts, defendant's guaranty was not exonerated by the merger.

4. The 1979 Agreement entered into by Bigheart and FFC was a conditional sales contract under the UCC, §9-504. In oral arguments before the Court on January 22, 1985, this Court determined, as a matter of law, that the 1979 agreement is a conditional sales contract, by construing the terms within the agreement with applicable law. The relevant factors determinative of a conditional sales contract are outlined in Fashion Optical v. Steele, 653 F.2d 1385 (10th Cir. 1981) and Citicorp Leasing Inc. v. Allied Institutional, 454 F.Supp. 511 (W.D. Okla. 1977).

5. The release of MGF from the 1979 Agreement, as the principal debtor after merger with Bigheart, did not release Turner from his obligations under his guaranty contract. Application of general principals of guaranty law will determine the guarantor's liability.[1] The general rule of law is that the release of the principal also releases the guarantor, Continental Bank's Trust v. Akwa, 206 N.W.2d 174, 182 (Wis. 1973). However there are two exceptions to this rule. Where the creditor releases a principal, the guarantor is discharged unless (1) the

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[1] This action involves two legal instruments: the conditional sales contract (i.e. the 1979 Agreement) entered into by Bigheart (debtor) and FFC (creditor). Its construction is governed by the UCC, 12A O.S. §3-401 and 12A O.S. §3-606. Turner's liability is not governed by the sales contract since he was not a signature thereto. See, Continental Bank & Trust Co. v. Akwa, 20t N.W.2d 174, 180 (Wis. 1973).

Defendant's liability flows from the terms and conditions outlined in his guaranty contract. This cause of action is for breach of that contract. U.S. v. Newton Livestock Auction Market Inc., supra. Oklahoma courts recognize the

(Footnote Continued)

creditor, in his release contract, reserves his rights against the guarantor, or (2) the guarantor, in his guaranty contract, consents to remain liable notwithstanding the release. Continental Bank, supra. In accord, U.S. v. Beardslee, 562 F.2d 1016 (6th Cir. 1977), cert. denied 439 U.S. 833 (1978); Victory Highway Village, Inc. v. Weaver, 480 F.Supp. 71 (D.C.Minn. 1979); Don Kral Inc. v. Lindstrom, 173 N.W.2d 921 (Minn. 1970); Knight v. Cheek, 369 A.2d 601 (Dist of Col.App. 1977); and Restatement of Law, Security, §122 (1941).

Under the terms of the guaranty agreement, defendant consented that FFC could "(e) accept partial payment from the Lessee or any such other party, (f) release or discharge, wholly or partially, any endorser or guarantor, (g) compromise or make any settlement or other arrangement with the Lessee," (¶5, p.2 Lease Guaranty). Under the terms of the Accord Agreement, FFC reserved its rights against the defendant. "This Accord Agreement shall not release or diminish Turner's liability to First Bank ..." (Accord Agreement p.3). "It is understood and agreed that this release of MGF shall not exonerate any of the Original Guarantors from liability with respect to the 1979 Leasing Agreement and

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(Footnote Continued)
separateness of the note and guaranty, Rabon v. Putnam, 164 F.2d 80 (10th Cir. 1947). Upon default of the principal debtor, here MGF as the surviving corporation, the guarantor's liability is determined by the terms of the guaranty contract. The calculation of damages are derived from the terms of the conditional sales contract since upon default the guarantor becomes primarily liable for performance of its obligor under the negotiable instrument to which he guaranteed payment. See generally, Continental Bank & Trust Co. v. Akwa, supra at 181.

default thereunder." (Accord Agreement p.8). Under Oklahoma law, guaranty agreements are to be construed most strongly against the guarantor and interpreted by the express terms therein. First National Bank of Hominy v. Citizens and Southern Bank, 651 F.2d 696 (10th Cir. 1981). In paragraph 5 of the guaranty agreement defendant consents to the release of the principal debtor, and in paragraph F of the Accord Agreement, plaintiff expressly reserves his rights against the defendant. Therefore the release of MGF from liability under the 1979 Agreement did not release defendant Turner of his secondary liability thereunder.

6. The giving of the $10,000.00 note which was subsequently in default should not be applied as part of the proceeds paid by MGF in satisfaction and release of its obligation to FFC. The general rule is that "[i]f the accord constitutes a binding contract and it is fully performed, the original liability is discharged." Don Kral Industries v. Lindstrom, supra at 923, citing Restatement of Law, Contracts, §417. "On the other hand, where the accord is not fully performed, the original claim is not satisfied and the accord does not constitute a defense to an action based on the original claim." Id. Once default on a note occurs and the principle obligation is left unsatisfied, "the guarantor became a debtor and liability attached." Crown Life Ins. Co. v. LaBonte, 330 N.W.2d 201 (Wis. 1983). A note received for a debt is not "payment" if not itself paid, Knight v. Cheek, supra at 604. See also U.S. v. Heyward-Robinson Co., 430 F.2d 1077, 1086 (2nd Cir. 1970), cert. denied, 400 U.S. 1021 (1971)

(the mere giving of a note does not constitute payment unless it is agreed that the note should be received as payment). MGF's $10,000.00 note was due and payable on June 9, 1984 (Ex.D Accord Agreement) upon default an accord and satisfaction under the 1979 Agreement had not been reached "because the entire debt was not satisfied," therefore defendant Turner became liable for the deficiency. Crown Life Ins., supra at 207.

7. At the oral arguments heard on January 22, 1985, before the Court, the attorneys for the parties stipulated to the method used for calculation of damages. In construing the 1979 Agreement as a conditional sales contract, damages are calculated as follows:

Principal balance due as of March 1, 1983, upon an original loan balance of $1,450,000.00 after 39 payments	$ 942,729.16	
Continuing interest from 4/1/83 to 10/31/83 at 13.61868% to the date of surrender of equipment and part payment of delinquency (10/31/83) (7 months)	74,925.57	
Balance of principal and interest due on date of Accord (10/31/83)		$ 1,017,654.73
Sale price of equipment under 1983 lease (10/31/83)	$ 816,049.00	
Cash received 10/31/83	194,000.00	
Total credit presently due		$ 1,010,049.00
Net due as of 10/31/83		$ 7,605.73

Defendant Turner, as guarantor, is liable to plaintiff FFC in the sum of $7,605.73 under the terms of his guaranty agreement.

8. In paragraph 2 of the guaranty agreement, defendant consented to pay all costs and expenses, including court costs and legal expenses, incurred in the enforcement of the guaranty contract. Defendant did not limit the scope of his guaranty in any way. Defendant must be held to the terms of his agreement, and this includes payment of attorney fees, costs and expenses as therein provided, First National Bank v. Citizens and Southern Bank, 651 F.2d 696, 699 (10th Cir. 1981). Prejudgment interest on the amount of the judgment is denied since at all times the amount in question was unliquidated, King v. Southwestern Cotton Oil Co., 585 P.2d 385, 394 (Okla.App. 1978).

Under the terms of defendant's guaranty agreement, the plaintiff is entitled to judgment in the amount of $7,605.73, reasonable attorney fees, costs and expenses.

IT IS SO ORDERED this 7th day of February, 1985.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
FEB - 8 1985
CLERK
COURT

FIRSTBANK FINANCIAL CORPORATION, a Massachusetts corporation, Plaintiff,	)	
vs.	)	No. 83-C-600-C
LYLE W. TURNER, Defendant.	)	

J U D G M E N T

This action came on for trial before the Court upon stipulation of the parties and the issues having been duly tried and a decision having been duly rendered,

IT IS SO ORDERED AND ADJUDGED that the plaintiff, Firstbank Financial Corporation, recover of the defendant, Lyle W. Turner, the sum of $7,605.73, post judgment interest at the rate of 9.09 percent as provided by law, reasonable attorney fees, and its costs of action.

IT IS SO ORDERED this 7th day of February, 1985.

H. DALE COOK
Chief Judge, U. S. District Court

Entitled

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

RAYMOND BRADLEY HUDELSON,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	
	)	
LUXURY AUTO SALES, INC., and LAWYERS SURETY CORPORATION,	)	
	)	
	)	
Defendants.	)	No. 84-C-266-B

ORDER

Pursuant to the Application for Dismissal filed herein by the plaintiff, Raymond Bradley Hudelson, the Court finds that said Application should be allowed and hereby dismisses the above entitled cause with prejudice to his right of filing any further action against the defendant, Lawyers Surety Corporation, all issue of law and fact having been fully compromised and settled.

S/ THOMAS R. BRETT

THOMAS R. BRETT
United States District Judge

Entered

FILED

FEB -8 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUDY JOHNSON MARESMA, individually and as Administratrix of the estate of JEREMIAH MARESMA,	)	
Plaintiff,	)	
vs.	)	No. 84-C-649-B
BILL McCLANNAN and RHEMA BIBLE CHURCH, formerly known as Kenneth E. Hagin Evangelistic Association, Inc., a non-profit corporation, and XYZ INSURANCE COMPANY,	)	
Defendants.	)	

ORDER OF DISMISSAL

On January 2, 1985, this matter came on for Status Conference before the Court. Plaintiff did not appear and had not obtained local counsel. Further, plaintiff had not obtained service on defendants. The Court reset the matter for February 8, 1985 and instructed the plaintiff that if she had not obtained service or local counsel by that date, the Court would dismiss the case.

Plaintiff did not appear at the status conference set for February 8, 1985. No local counsel has made an appearance and plaintiffs have not obtained service on defendants. Sua sponte, the Court hereby dismisses this cause without prejudice.

IT IS SO ORDERED this 8th day of February, 1985.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT FOR

THE NORTHERN DISTRICT OF OKLAHOMA

JERRY MORRIS,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	No. 83-C-1053-B
	)	
LARRY PURYEAR, and THE CITY OF COMMERCE, OKLAHOMA, a municipal corporation,	)	
	)	
	)	
Defendants.	)	

ORDER DISMISSING WITH
PREJUDICE THE DEFENDANT, LARRY PURYEAR

NOW on this 8th day of February, 1985, the joint application for dismissal with prejudice of the defendant, Larry Puryear, and the plaintiff, Jerry Morris, came on before the Court for hearing. The Court finds that a settlement agreement has been reached in regard to the defendant, Larry Puryear, wherein the defendant will be dismissed with prejudice. The Court further finds that the sum of $10,000.00 settlement paid by the defendant, Puryear, will act as a release and discharge of any and all rights, claims, demands and damages of any kind, known or unknown, existing or arising in the future, resulting from or releated to the personal injuries and/or property damage arising from an incident that occurred on the 23rd day of May, 1983 at Commerce, Ottawa County, Oklahoma which is the subject of the above styled and docketed matter.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendant, Larry Puryear, is dismissed with prejudice.

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

James Frasier
Attorney for Plaintiff

H. G. E. Beauchamp
Attorney for Plaintiff

Ronald E. Hignight, Attorney
for Defendant, Larry Puryear

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DYCO PETROLEUM CORPORATION,)
)
Plaintiff,)
) Case No. 83-C-858-C
vs.)
)
FAWNMARK MINERALS, LTD., et al.,)
)
Defendants.)

ORDER DISMISSING DEFENDANT DI ENERGY, INC.

Upon the Motion of Plaintiff, Dyco Petroleum Corporation, to Dismiss Defendant, DI Energy, Inc., and for good cause shown, the Court, being fully advised in the premises, finds that said Motion should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The Defendant, DI Energy, Inc. is dismissed without prejudiced from the above captioned cause; and,

2. No costs are to be charged against either Plaintiff or Defendant, DI Energy, Inc.

Date: Jan 7, 1985

s/H. DALE COOK
United States District Judge

Submitted by:
Paula E. Pyron

Lance Stockwell
Charles H. Crain
Paula E. Pyron
Of BOESCHE, McDERMOTT & ESKRIDGE
320 South Boston, Suite 1300
Tulsa, Oklahoma 74103
(918) 583-1777

ATTORNEYS FOR PLAINTIFF
DYCO PETROLEUM CORPORATION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FRANK TEWELL, Plaintiff,	)	
vs.	)	Case No. 84-C-734-C
RAINBO-CONTINENTAL BAKING COMPANY and BAKERY, CONFECTIONERY AND TOBACCO WORKERS INTERNATIONAL UNION, Local #65, Defendant.	)	

ORDER OF DISMISSAL WITH PREJUDICE

NOW on this 7th day of February, 1985, this matter came before me, the undersigned United States District Judge, upon the written Stipulation for Dismissal of all parties in the above captioned proceeding; and the Court, upon consideration of such Stipulation, and being fully advised in the premises finds that:

1. The Stipulation for Dismissal with Prejudice executed by all parties in this proceeding should be ratified, confirmed and approved by the Court.

2. The above captioned proceeding should be dismissed with prejudice to the filing by Plaintiff of another action against the Defendants herein, or either of them, at a later date in accordance with the terms and provisions of the aforementioned Stipulation for Dismissal executed by the parties herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the aforementioned Stipulation for Dismissal be, and the

same hereby is ratified, approved and confirmed by the Court according to its terms.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that this action be, and the same hereby is dismissed with prejudice, all in accordance with the provisions of the aforementioned Stipulation.

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

Frank Tewell, Plaintiff

Jeff Nix
1310 South Denver
Tulsa, Oklahoma 74119

Attorney for Plaintiff

John M. Keefer,
JARBOE, KEEFER & SWINSON
1810 Mid-Continent Tower
Tulsa, OK 74103
(918) 582-6131

ATTORNEYS FOR RAINBO-CONTINENTAL BAKING COMPANY, DEFENDANT

Thomas F. Birmingham
Ungerman, Conner & Little
2727 East 21st, Suite 400
Tulsa, OK 74101

ATTORNEY FOR DEFENDANT,
Bakers Union Local # 65 and
Bakery Confectionery & Tobacco Workers
International Union

IN THE UNITED STATE DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Plaintiff,	)	
v.	)	No. 84-C-653-B
RICHARD TETER, KEN RUSSELL, NICK NELSON, TERESA DEZORT, MARY KALCICH, LINDA GADELMAN, IRENE MASON, KEITH E. HOUSE, JOHN MALANOWSKI, MIKE LOCKETT, THE WESTERN INSURANCE COMPANIES, AND FARMERS INSURANCE COMPANY, INC., Defendants.	)	

ORDER

NOW ON this 8th day of February, 1985, this matter is before the Court for a distribution of the funds that have been deposited by State Farm Mutual Automobile Insurance Company. This Court is cognizance of the fact that all of the parties appear before the Honorable Robert S. Rizley for a settlement conference on December 17, 1984. This Court further takes notice that at that conference, the following agreement was reached amongst the parties:

1. The defendant, LINDA GADELMAN, is entitled to the sum of $50,000.00 from the original $100,000.00 that was paid into Court.

2. The defendant, MARY KALCICH, is entitled to the sum of $29,411.75 from the original $100,000.00 sum.

3. The defendant, RICHARD TETER, is entitled to the sum of $11,764.70 from the original $100,000.00 sum.

4. The defendant, IRENE MASON, is entitled to the sum of $8,823.55 from the original $100,000.00 sum.

The Court further finds that it is agreed amongst the parties that the

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defendant, KEITH E. HOUSE, is entitled to the sum of $1,200.00. This sum will be taken from the interest that has accrued during the time that the $100,000.00 has been deposited with the Court Clerk. The remaining balance of that interest is to be divided amongst the defendants LINDA GADELMAN, MARY KALCICH, RICHARD TETER, AND IRENE MASON in the same proportions as the original $100,000.00 was divided. That is, i.e., 1/2 (one-half) of that amount to the defendant LINDA GADELMAN, and the remaining portion of interest is to be distributed to the defendants, KALCICH, TETER, AND MASON, by the same proportions as the original $50,000.00. Those proportions are by a factor of .588235, .235294, and .176471 respectively.

The Court further takes notice of the letters received from the defendants DEZORT, NELSON, and LOCKETT, marked as Exhibits A, B. and C, respectively. Based upon the representations made in those letters, the Court finds that those parties are not entitled to take any of the funds deposited in this Court.

The Court further finds that the uninsured motorist carriers, THE WESTERN INSURANCE COMPANIES, FARMERS INSURANCE COMPANY, INC., AND PRUDENTIAL INSURANCE COMPANY, have all represented and agreed to waive any rights of subrogation they may have against STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY or its insured, DEBRA GALLUP.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the foregoing findings become the Order of this Court and upon payment of the monies

deposited with the Court Clerk, that the matter be dismissed with prejudice. The Clerk is hereby directed to disburse such monies.

THE HONORABLE THOMAS R. BRETT
Judge of the United States District Court, Northern District

APPROVED AS TO FORM AND CONTENT:

Gregory D. Nellis
Attorney for State Farm

John F. McCormick, Jr.
Attorney for Linda Gadelman

Phyllis DeWitt
Attorney for Richard Teter

Phil McGowan
Attorney for Keith E. House

Patrick E. Carr
Attorney for Irene Mason

William K. Powers
Attorney for Mary Kalcich

John B. Stuart
Attorney for Western Insurance Companies

Scott T. Knowles
Attorney for Farmers Insurance Company

August 8, 1984

Summons in Civil Action
Case 84-C-653-E
Northern District Court
Tulsa County, Oklahoma

Mr. Frank Parsons
Farmers Insurance Company
P.O. Box 1315
Bartlesville, OK 74003

Gentlemen:

Attached are complete copies of the Summons, Complaint, and Acknowledgement which I received by certified mail on August 6, 1984.

To date, Farmers Insurance Company has paid $848.76 of the $871.76 sum total amount of bills that I have submitted. The balance of $23.00 constitutes the form of a bill for $23.00, which was recently submitted. Perhaps it is being processed for payment at this time.

Per Part II, Special Provisions, 5.(a) of my Farmers Policy, it is my understanding that I am legally unable to file a disclaimer due to Company (Farmers) entitlement of recovery of settlement from any person(s) or organization legally responsible for my injury.

It is my request that either you pursue recoupment from State Farm Insurance for monies due Farmers Insurance by interpleading in my behalf in the complaint described in the attached. If it is not the intention of Farmers Insurance to pursue this claim by interpleading, please submit a formal release to me, releasing me from any obligations to Farmers Insurance Company. It is not my intention at this time to interplead in this case.

Your prompt attention to this matter will be appreciated. Thank you.

Very truly yours,

Teresa L. DeZort

Teresa L. DeZort
2131 Elm Hill Pike
2131 Apartment #S-330
Nashville, TN 37210
(615) 889-7487

/tld

Attach.

EXHIBIT A

9083 E. 28th Street
Tulsa, Oklahoma 74129
August 11, 1984

John S. Sharp
Best, Sharp, Thomas, Glass & Atkinson
Suite 300 Oil Capital Building
507 South Main
Tulsa, Oklahoma 74103

Ref: State Farm Mutual Automobile Insurance Company vs. Richard Teter, et al. Case No. 84-C-653-E in the United States District Court for the Northern District of Oklahoma.

Gentlemen:

In reference to the above case, of which I am one of the defendants, I am enclosing the executed form Acknowledgment of Receipt of Summons and Complaint. I received injuries in the automobile accident to which this case pertains. State Farm Mutual Automobile Insurance Company has paid all of my hospital and medical bills through the Uninsured Coverage of my own automobile insurance I have with this company.

At the present time, I feel that I have recovered fully from the injuries I sustained in the accident. As other occupants of the van in which we were riding at the time of the accident were injured much more seriously than I was, I feel that available money from the insurance company should be used to assist them in paying their medical expenses. Therefore, I do not plan to file any action involving this accident. I ask that you accept this as my disclaimer in this suit.

Very truly yours,

Nick Nelson

Nick Nelson

EXHIBIT B

JAUARY 17, 1985

MR JOHN S SHARP
BEST, SHARP, THOMAS, GLASS & ATKINSON
507 SOUTH MAIN
300 OIL CAPITOL BUILDING
TULSA, OK 74103

IN RE: STATE FARM MUTUAL
AUTOMOBILE INSURANCE CO
VS.
RICHARD TETER, et al.

DEAR MR. SHARP:

ATTACHED PLEASE FIND A SIGNED AND DATED ACKNOWLEDGEMENT REGARDING THE CAPTIONED LETTER. I HAVE NOT HIRED AN ATTORNY. AT THIS TIME I KNOW OF NO INJURY I HAVE SUFFERED FROM THE ACCIDENT WHICH IS THE SUBJECT OF THE CAPTIONED LAWSUIT; HOWEVER, I DO NOT WANT TO DO ANYTHING TO JEOPARDIZE MY LEGAL RIGHTS SHOULD AT SOME FUTURE TIME AN INJURY BE DISCOVERED WHICH WAS A DIRECT RESULT OF THIS ACCIDENT. IT IS MY UNDERSTANDING THAT YOU HAVE INDICATED THAT IF I WROTE YOU SAYING THAT AS OF TODAY I HAVE NO INJURY AND SEEK NO MONETARY DAMAGES THAT I WOULD NOT BE JEOPARDIZING ANY OF MY LEGAL RIGHTS SHOULD I LATER FIND SOME HIDDEN INJURY WHICH DIRECTLY RESULTED FROM THIS ACCIDENT.

I HOPE THIS LETTER FULFILLS YOUR REQUEST AND SERVES AS MY ANSWEAR TO YOUR COMPLAINT.

VERY TRULY YOURS,

EXHIBIT C

CC: US DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
CASE # 84-C-653-E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TULSA MAILERS UNION, LOCAL No. 145, INTERNATIONAL TYPOGRAPHICAL UNION, Plaintiff,	)	
vs.	)	No. 84-C-628-C
NEWSPAPER PRINTING CORPORATION, an OKLAHOMA CORPORATION, Defendant.	)	

STIPULATION OF DISMISSAL WITH PREJUDICE

IT IS HEREBY STIPULATED AND AGREED by and among counsel for plaintiff Tulsa Mailers Union, Local No. 145 and defendant Newspaper Printing Corporation that pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, this action is dismissed with prejudice, each party to bear its own costs and attorney's fees.

Dated: February 7, 1985

D. Gregory Bledsoe
1515 South Denver
Tulsa, OK 74119
(918) 599-8118
Attorney for Plaintiff

BOONE, SMITH, DAVIS, HURST

Edwin S. Hurst
900 World Building
Tulsa, OK 74103

KING, BALLOW & LITTLE

Richard C. Lowe
2400 First American Center
Nashville, TN 37238
(615) 259-3456

Attorneys for Defendant

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
CLARE J. WILLETT and NANCY R. WILLETT,	)	
	)	
Defendants.	)	CIVIL ACTION NO. 84-C-881-E

NOTICE OF DISMISSAL

COMES NOW the United States of America by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Nancy Nesbitt Blevins, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 6th day of February, 1985.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

Nancy Nesbitt Blevins

NANCY NESBITT BLEVINS
Assistant United States Attorney
460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 7th day of February, 1985, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Clare J. Willett and Nancy R. Willett, 641 West El Caminito, Tucson, Arizona 85705.

Nancy Nesbitt Blevins
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

THE BOVAIRD SUPPLY COMPANY, Plaintiff,	)	
vs.	)	No. 84-C-675-E
NOLAN H. BRUNSON, JR., JOHN B. CASTLE AND KENNETH R. MARSH, Defendants.	)	

STIPULATION OF SETTLEMENT

COME NOW Plaintiff and Defendants and stipulate that the above case has been settled and compromised on the following terms and conditions:

1. Defendants will pay Plaintiff the sum of $30,000.00, $15,000.00 to be paid on or before February 15, 1985 and the balance on or before April 16, 1985. Any unpaid balance as of February 16, 1985, will bear interest at the rate of 12% per annum.

2. Upon payment of the final balance, Plaintiff will dismiss its action against Defendants, with prejudice.

3. If Defendants fail to make the above payments, Plaintiff shall be free to pursue its original suit and shall not be limited to enforcement of the settlement agreement.

4. The parties stipulate and agree to the retention of this matter on the Court's docket until final payment is made.

5. The settlement of this matter is governed by an Agreement among the parties, a copy of which is attached as Exhibit A. In the event of any conflict between the Agreement and this Stipulation, the terms of the Agreement shall prevail.

Respectfully submitted,

/s/ Burk E. Bishop

Burk E. Bishop
of BOESCHE, McDERMOTT & ESKRIDGE
320 South Boston, Suite 1300
Tulsa, Oklahoma 74103
(918) 583-1777

ATTORNEYS FOR PLAINTIFF

/s/ Robert W. Blair by POA

Robert W. Blair
LAW, SNAKARD & GAMBILL
3200 Texas American Bank Building
Fort Worth, TX 76102
(817) 335-7373

/s/ David Newsome

P. David Newsome
CONNER & WINTERS
2400 First National Tower
Tulsa, OK 74193
(918) 586-5711

ATTORNEYS FOR DEFENDANTS.

AGREEMENT

Agreement among The Bovaird Supply Company ("Bovaird"), Nolan H. Brunson, Jr., ("Brunson"), Kenneth E. Marsh ("Marsh") and John B. Castle ("Castle").

RECITALS

1. Bovaird is the Plaintiff and Brunson, Marsh and Castle the Defendants in Civil Action No. 84-C-675-E, presently pending in the United States District Court for the Northern District of Oklahoma.

2. Brunson, Marsh and Castle are the shareholders and officers of Rigco, Inc., a debtor-in-possession under Chapter 11 of the U.S. Bankruptcy Code in case No. 11-82-01166 MR presently pending in the U.S. Bankruptcy Court for the District of New Mexico.

3. The parties hereto desire to reach an accord as to the action in the Northern District of Oklahoma, subject to and conditioned upon the settlement of Bovaird's claim in the Rigco, Inc. bankruptcy on the terms herein described.

CONDITION PRECEDENT

4. This Agreement is expressly conditioned upon the final approval of an allowed unsecured claim in favor of Bovaird in the Rigco bankruptcy of $1,100,000, with $300,000 subordinated to the claims of other unsecured creditors until actual distributions to unsecured creditors equal $750,000. For purposes of this Agreement, "final approval" shall mean an order of the Bankruptcy Court allowing Bovaird's claim as indicated, which order is no longer subject to appeal, or the final determination of any appeal or certiorari proceeding affirming the allowance of Bovaird's claim on such terms. If Bovaird's claim is not approved as indicated, this Agreement shall be of no force and effect, as if it had never been entered into.

SETTLEMENT

5. Upon payment of the sum of Thirty Thousand Dollars ($30,000.00) Bovaird will dismiss its action against Brunson, Marsh and Castle, with prejudice, and will execute and deliver such releases as may be reasonably required.

6. If payment is not made within 30 days of the date upon which the allowance of Bovaird's claim becomes final, Bovaird may, at its option, terminate this Agreement, except

that not more than $15,000 of the amount owing to Bovaird may be deferred for a period not to exceed 90 days from the date of final allowance of Bovaird's claim. Interest at the rate of twelve (12) percent per annum may be charged on any unpaid balance owing after the expiration of 30 days from the date of final allowance of Bovaird's claim.

7. It is expressly agreed and understood that the consideration for this Agreement in favor of Bovaird is the actual payment of the sums indicated above, and not the promises of Brunson, Marsh, and Castle to pay the same. This Agreement shall be construed as an executory accord, and, when fully performed, will constitute an accord and satisfaction. If this agreement is not performed, Bovaird shall retain whatever causes of action it may have had against Brunson, Marsh and Castle prior to the execution of this Agreement, and shall not be limited to the enforcement of or damages under this Agreement.

MODIFICATIONS

8. This Agreement may be modified only by written instrument signed by the party to be charged with such modification.

9. This Agreement may be executed in multiple counterparts, and any counterpart may be executed by less than all parties. The Agreement shall not be binding upon any of the parties until all parties have executed at least one counterpart. The date of this Agreement shall be deemed to be the date of execution by the last party to execute.

10. This Agreement shall be construed in accordance with the laws of the State of Oklahoma.

THE BOVAIRD SUPPLY COMPANY

By _____

1-7-85
Date

Its Vice President

12-26-84
Date

Nolan H. Brunson, Jr.

12-26-84
Date

Kenneth R. Marsh

12-26-84
Date

John B. Castle

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

R. PERRY WHEELER, et al.,)
)
Plaintiffs,)
)
vs.) No. 84-C-116-C
)
UNITED STATES DEPARTMENT)
OF THE INTERIOR, BUREAU OF)
INDIAN AFFAIRS, et al.,)
)
Defendants.)

J U D G M E N T

This matter came on before the Court for determination of defendants' motion for summary judgment. There being no controverted material facts, the issues having been duly considered, and a decision having been duly rendered in accordance with the Order granting summary judgment herein,

IT IS ORDERED AND ADJUDGED that the defendants, United States Department of the Interior, Bureau of Indian Affairs, et al., are entitled to judgment against the plaintiffs, R. Perry Wheeler, et al., pursuant to Rule 56 F.R.Cv.P.

IT IS SO ORDERED this 6 day of February, 1985.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
FEB -6 1985
CLERK
U.S. DISTRICT COURT

B & L AUTO SUPPLY COMPANY, a corporation; and ARCHIE D. BISHOP, Plaintiffs,	)	
vs.	)	Case No.: 83-C-756-C
HOT WEATHER FILMS, Defendant.	)	

ORDER OF DISMISSAL

ON This 6th day of February, 1985, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiff filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.

(Signed) H. Dale Cook

JUDGE, DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:

ED ABEL,

Ed Abel

Attorney for the Plaintiffs,

RICHARD D. WAGNER,

Richard D. Wagner

Attorney for the Defendant.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

R. PERRY WHEELER, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. 84-C-116-C
	)	
UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, et al.,	)	
	)	
Defendants.	)	

O R D E R

NOW before this Court for its consideration is the Defendants' motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. Defendants seek to have this Court find that the actions of the Assistant Secretary of the Department of Interior were not arbitrary, capricious, or an abuse of discretion in his recognizing the individual as Principal Chief who was certified by the Tribal Election Board as having won the 1983 election. For the reasons set forth below, Defendants' motion for summary judgment is granted.

Plaintiffs assert jurisdiction under the Administrative Procedure Act, 5 U.S.C. § 702 et seq. and asserts federal question jurisdiction under 28 U.S.C. § 1343(4). Although other jurisdictional grounds are asserted, this Court concludes that only the above cited statutes vest this Court with subject matter jurisdiction in this case.

Facts:

The facts are uncontroverted. Plaintiff R. Perry Wheeler was a candidate for Principal Chief of the Cherokee Nation of Oklahoma in the election of 1983. Commencing June 20, 1983 Plaintiff filed a variety of pleadings with the Tribal Election Committee alleging irregularities in the election procedure, and requesting an FBI investigation, a recount, a run-off election, and participation in deciding upon procedure standards for the same. The Committee dismissed the requests and referred Plaintiff to the Judicial Appeals Tribunal. On June 29, 1983 Plaintiff filed a petition and appeal with the Tribunal alleging election irregularities. The Tribunal heard oral arguments and authorized the recount. Plaintiff filed additional motions, followed by oral arguments. On July 8, 1983 in a two to one decision the motions were denied and the incumbant Principal Chief was thereafter certified by the Tribal Election Board as the winner of the 1983 election.

On July 20, 1983 Plaintiff petitioned the Superintendant of the Bureau of Indian Affairs (hereinafter BIA) requesting an investigation and hearing regarding the 1983 tribal election, seeking to decertify the election results and that all BIA funding to the Cherokee Nation be frozen until the election dispute is resolved. On October 7, 1983 the petition was denied by referring Plaintiff to the final decision of the Judicial Appeals Tribunal. On November 7, 1983 Plaintiff perfected an appeal to the Assistant Secretary of the Department of Interior

for Indian Affairs. By formal letter dated January 10, 1983 the Assistant Secretary denied Plaintiffs' requests since they were based solely on unproven allegations and since the tribal government was continuing to function whether properly or not. The Assistant Secretary reviewed the applicable case law and interpreted it to preclude authority in BIA to grant the relief sought by Plaintiff and classified the dispute as an intra-tribal matter involving its rights to self-government outside the perimeters of BIA supervisory authority.

On February 15, 1984 Plaintiffs filed a complaint in this Court seeking review in a trial de novo of the final agency decision of the Department of Interior. The Plaintiffs seek an order directing the Interior Department and other officials who are defendants herein to recognize R. Perry Wheeler as the Principal Chief of the Cherokee Nation as representatives of the Cherokee people. The suit also seeks an order directing the Defendants to withhold federal funds from the current tribal officials until either Plaintiff is recognized as Principal Chief or a new election is held. Plaintiff has petitioned the Court to compel the Defendants to assume a supervisory role in investigating the 1983 election as a fiduciary would over a trust under the authority of Seminole Nation v. U.S., 316 U.S. 286 (1942) and Milam v. U.S. Dept. of Justice, 10 ILR 3013 No. 82-3099 (D.C. Dec. 23, 1982). The suit also seeks a declaration that the Defendants have violated their federal trust duties owed to the Cherokee people together with an order either reassigning those trust duties to someone else or compelling the Defendants

to carry out their trust responsibilities citing U.S. v. Mitchell, ____ U.S. ____, 77 L.Ed.2d 580 (1983).

The Defendants allege that while the Department of Interior does have the authority to manage Indian property as trustee for the Indians citing U.S. v. Mitchell, supra, it does not have similar management over tribal government, citing the Indian Reorganization Act, 48 Stat. 984, 25 U.S.C. § 461-479 as Congressional authority for tribes to adopt their own constitutions and exercise powers as self-governing bodies. The matters regarding Indian sovereignty upon Indian reservations cannot be intruded upon by federal or state government citing Southland Royalty Co. v. Navajo Tribe, 715 F.2d 486, Fisher v. District Court, 424 U.S. 382 (1976), Morton v. Mancari, 47 U.S. 535 (1974) and Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1979).

CONCLUSIONS OF LAW:

The administrative record of the BIA and the Department of Interior is before the Court. The final decision of the Assistant Secretary is attached. Plaintiff asserts that the Department's decision is subject to de novo review because the Department had engaged in an adjudicatory proceeding in denying Plaintiffs' requested relief. The Department's decision is not subject to a de novo review by this Court because it did not

engage in an adjudicatory fact finding process.[1] Rather the Department reviewed applicable statutes, and caselaw to determine the outside perimeters of its authority to supervise and oversee tribal affairs. The Department concluded that the activity complained of by Plaintiff was outside its domain and therefore had no legal power to assist plaintiff in obtaining the relief requested.

A district court's function, on appeal of this administrative action, is to review the record to determine whether the Department was correct in its interpretation of applicable law as to the scope of authority in regulating external and internal Indian affairs. Under these circumstances, there is no need to find any facts at all in order to decide the Department's scope of authority.

This Court finds that the activities in question are of a purely political nature relating to intra-tribal governmental affairs and within the sovereignty of the Indian Nation, such activities, regardless how offensive or irregular, are outside the control or supervision of the federal regulatory agencies. This policy is an ancient maxim articulated by Justice Marshall in 1832, Indian nations are "distinct political communities, having territorial boundaries, within which their authority is

---

[1]The Assistant Secretary denied adjudicatory review by saying "Since the factual allegations in your petition, even if proved, would not be sufficient to cause the Department to refuse to recognize the certified results of the election, we do not intend to conduct a hearing based on them." Department of Interior letter dated January 10, 1984 at p.4.

exclusive." McClanahan v. Ariz. State Tax Comm., 411 U.S. 164, 168 (1973) citing Worcester v. Georgia, 6 Pet. 515, 557 (1832) (emphasis added). The sovereignty of the Indian Nations emcompasses a recognition of Indians as "separate people, with the power of regulating their internal and social relations." McClanahan, supra, citing U.S. v. Kagama, 118 U.S. 381. The Cherokee Nation has the same political options available as any other self governing nation in electing public officials in both the executive and legislative branches, and the appointment of a qualified judiciary. In so doing, the Cherokee constitution allows their citizenry the right to elect fifteen council members whose sworn duty it is to provide a check and balance against the actions of the Principal Chief. The Cherokee people are guaranteed the freedom of speech and press by their constitution, the U.S. Constitution and federal statutes allowing a mechanism to air grievances or challenges of a political nature.[2] The U.S. Constitution guarantees the protection of a democratic society, with all its enumerated freedoms. The Indian Reorganization Act, 48 Stat. 984, 25 U.S.C. § 461-479 established the Cherokee Nation as a political sovereignty, this mandates not only a right of self determination, but also a responsibility of self determination. These responsibilities cannot be infringed on by any American court of law as long as the Cherokee government maintains a democratic structure. Any alleged weakness within

[2]The Indian Civil Rights Act § 1302 provides: "No Indian tribe in exercising powers of self government shall (1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or the press, or the right of the people peacefully to assemble and to protect for a redress of grievances."

that structure should be dealt with through their check and balance system and the political education of the Cherokee electorate. In 1968 Congress passed the Indian Civil Rights Act, Pub.L. 90-284, 82 Stat. 77, 25 U.S.C. § 1301-1341, which required Indian tribes to protect many of the individual rights that the U.S. Constitution affords. Congress intended this Act as a "policy of furthering Indian self-government" allowing political controversies to be handled democratically and internally.

The factual circumstances of United States v. Mitchell, supra, relied on by Plaintiff is not applicable. It involves the forestry lands situated within Indian territories and administered by the Department of Interior. This involves a regulatory function within the perimeters of the Department's control. It also involves a claim for money damages under the Tucker Act and has no relevance to the subject action.

For the aforesaid reasons, this Court affirms the final decision of the Department of Interior as outlined in its January 10, 1984 letter.

Accordingly, it is the Order of the Court that Defendants' motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure is granted.

It is ORDERED this 15th day of February, 1985.

H. DALE COOK
Chief Judge, U. S. District Court

Entered

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CHRISTINA M. OVERTON,

Plaintiff,

vs.

NATIONWIDE MUTUAL INSURANCE COMPANY, a foreign insurance company,

Defendant.

Case No. 84-C-755-dE

ORDER OF DISMISSAL

On this 5th day of February, 1985, the above matter comes on for hearing upon the written Application to Dismiss With Prejudice of the Plaintiff herein. The Court having examined said Application, and being fully advised in the premises, finds that said cause of action should be dismissed pursuant to said Application.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the above-entitled cause of action be and the same is hereby dismissed with prejudice.

UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC - 5 1984

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
DALE R. PITMAN,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 84-C-529-E

DEFAULT JUDGMENT

This matter comes on for consideration this 5th day of ~~December~~ February, 1984, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Dale R. Pitman, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Dale R. Pitman, acknowledged receipt of Summons and Complaint, which Notice and Acknowledgment for Service by Mail was filed on June 15, 1984. This matter was set for a disposition hearing on December 7, 1984, and Defendant was duly notified but he failed to appear. Plaintiff is therefore entitled to Default Judgment herein against the Defendant.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Dale R. Pitman, in the amount of $328.67, plus interest at the rate of 15.05 percent per annum and administrative costs of $.61 per month from August 10, 1983, and $.68 per month from

January 1, 1984, until judgment, plus interest thereafter at the current legal rate of 9.09 percent from the date of judgment until paid, plus the costs of this action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

LOUISE ARMER, Plaintiff,	)	
v.	)	No. 84-C-414 E
CHARLES J. DAVIS, d/b/a SHANGRI-LA LODGE; SHANGRI-LA LODGE, INC.; and SHANGRI-LA REALTY CORPORATION, Defendants.	)	

ORDER OF DISMISSAL

Now on this 4th day of February, 1984, it appearing to the Court that this matter has been compromised and settled, this case is herewith dismissed with prejudice to the refiling of a future action.

S/ JAMES O. ELLISON
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

INLAND STEEL COMPANY, Plaintiff, vs. ATLAS TOWER CONSTRUCTION, INC., an Oklahoma corporation, Defendant.	)	No. 84-C-923E

JUDGMENT

THIS ACTION was considered by the Court on the 30th day of January, 1985, on Application of the plaintiff for the entry of default judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure; it appearing to the Court that the Complaint in this action was filed on November 20, 1985, that Summons and Complaint were duly served on the defendant as required by law, it further appearing to the Court that defendant has wholly failed to enter its appearance in the action or otherwise plead, and has defaulted, and it further appearing that the default was entered against the defendant on the 28th day of January, 1985, by the Court Clerk, and that no proceedings have been taken by defendant since entry of his default.

The Court, having reviewed the pleadings, exhibits and affidavits on file find:

1. That the defendant is in default.

2. That plaintiff is entitled to default judgment in its favor, for the relief prayed for.

3. That plaintiff is the prevailing party and thereby entitled to an attorney fee award pursuant to Title 12, Oklahoma Statutes, Section 936.

4. That the Court finds, based upon affidavits on file in the action, a reasonable attorney fee for plaintiff is $ 585.00.

IT IS ORDERED AND ADJUDGED BY THE COURT, that the plaintiff, Inland Steel Company, recover of defendant, Atlas Tower Construction, Inc., judgment in the sum of $51,444.09, with interest of ~~fifteen percent (15%)~~ 9.09 % per annum on said sum from the 30th day of January, 1985, until said judgment is satisfied, ~~in accordance with Title 12, Oklahoma Statues, Section 727~~, and all costs expended in the action.

IT IS FURTHER ORDERED AND ADJUDGED BY THE COURT, that plaintiff, Inland Steel Company, recover of defendant, Atlas Tower Construction, Inc., judgment for reasonable attorney fees in accordance with Title 12, Oklahoma Statutes, Section 936, determined by the Court to be the sum of $ 585.00.

James O. Ellison

JUDGE OF THE UNITED STATES
DISTRICT COURT

211-002-4:ksc:012185

Entered

FILED

FEB - 5 1985

Jack C. Silver, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CHARLES CHAMBERS,

Plaintiff,

vs.

CITY OF PRYOR CREEK, et al.,

Defendants.

No. 84-C-879-E

O R D E R

The Court has now before it the motions of Defendants Board of County Commissioners of Rogers and Mayes County, Oklahoma to dismiss. Defendant Mayes County asserts that this cause must be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure in that Plaintiff's claim is barred by the statute of limitations set forth in Title 51 O.S. § 156 B which provides that a claim against a political subdivision or employee shall be barred unless notice is filed with the Clerk of the governing body within 120 days after the loss occurs.

Defendant Rogers County moves to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim under Title 47 O.S. § 52.

The Court need not address the specific allegations of these Defendants, because this Court lacks jurisdiction over the parties. Plaintiff's allegations in regard to the Defendant Counties charge only that the counties are liable to the Plaintiff pursuant to certain Oklahoma state statutes. Plaintiff

here attempts to join the counties in an action in federal court by invoking "pendant party" jurisdiction.

Since a county is not consisdered a "person" under 42 U.S.C. § 1983, there exists no independent basis of federal jurisdiction. The United States Supreme Court in Aldinger v. Howard, 96 S.Ct. 2413, 2419 (1976) addressed a similar attempt to join a county in an action pursuant to 42 U.S.C. § 1983. The Court distinguished the use of ancillary jurisdiction to adjudicate a claim deriving from a common nucleus of fact against a defendant properly before a federal court, and the use of the doctrine to permit a plaintiff who has asserted a claim against one defendant with respect to which there is federal jurisdiction, to join an entirely different defendant on the basis of a state law claim over which there is no independent basis of federal jurisdiction, "simply because his claim against the first defendant and his claim against the second defendant derive from a common nucleus of operative fact." Aldinger supra at page 2420. The addition of a completely new party runs counter to the well established principle that federal courts are courts of limited jurisdiction marked out by Congress.

In view of this Court's conclusion that it lacks jurisdiction over the Defendant counties, it need not consider whether or not Plaintiff has stated a cause of action under the applicable Oklahoma statutes.

IT IS THEREFORE ORDERED AND ADJUDGED that the motion of

Defendant Board of County Commissioners of Rogers County to dismiss be and the same is hereby granted.

IT IS FURTHER ORDERED that the motion to dismiss of Defendant Board of County Commissioners of Mayes County be and the same is hereby granted.

ORDERED this 4TH day of ~~January~~ February 1985.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FEB - 4 1985

U.S. DISTRICT COURT

HARRY KEITH & SONS, INC.

Plaintiff(s),

vs.

No. 84-C-731-C

THE CITY OF SOUTH COFFEYVILLE, OK.

Defendant(s).

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel for plaintiff that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 4th day of February, 1985.

UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FEB -4 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

B & L AUTO SUPPLY CO. & ARCHIE BISHOP

Plaintiff(s),

vs.

No. 83-C-756-C

HOT WEATHER FILMS

Defendant(s).

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 4 day of FEBUARY, 1985.

(Signed) H. Dale Cook
UNITED STATES DISTRICT JUDGE
H. DALE COOK

IN T⁀ UNITED STATES DISTRICT CC⁀T
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Entered

FILED

FEB -4 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

LARRY DALE GREEN,)
)
Petitioner,)
)
v.) No. 85-C-65-B
)
JERRY JOHNSON, et al.,)
)
Respondents.)

ORDER

The Court has before it the petition for writ of habeas corpus filed by Larry Dale Green, pursuant to 28 U.S.C. §2254 and 28 U.S.C. §2241. Petitioner is an inmate at J.H. Lilley Correctional Center in Boley, Okfuskee County, Oklahoma, which is in the Eastern District of Oklahoma. He was convicted in the District Court of Oklahoma County, which is in the Western District of Oklahoma.

Under 28 U.S.C. §2241(d), an application for writ of habeas corpus which is made by a state prison inmate in a state which contains more than one Federal judicial district may be filed in the district court for the district wherein the person is in custody, or in the district court for the district within which the state court was held which convicted and sentenced him. Petitioner herein was convicted and sentenced in the Western District of Oklahoma and is in custody in the Eastern District of Oklahoma. Therefore, venue is improper in the Northern District of Oklahoma.

Since the petitioner was convicted and sentenced in a state court in the Western District, and since the Western District would provide the most convenient forum for witnesses, should any

be called, this petition is hereby ordered to be transferred to the United States District Court for the Western District of Oklahoma. See Reed v. Henderson, 463 F.2d 485 (6th Cir. 1972); Mitchell v. Henderson, 432 F.2d 435 (5th Cir. 1970).

ENTERED this 1ST day of ~~January~~ Feb., 1985.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SAINT FRANCIS HOSPITAL, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 84-C-1026-C
	)	
HADEN INDUSTRIES, INC.,	)	
	)	
Defendant.	)	

O R D E R O F T R A N S F E R

Now before the Court for its consideration is defendant's Motion to Dismiss or to Transfer.

After carefully reviewing the pleadings and affidavits herein, it is apparent to the Court that it has no personal jurisdiction over the defendant.

Therefore, this action should be and hereby is transferred to the United States District Court for the Northern District of Texas, Dallas Division, pursuant to 28 U.S.C. §1404(a).

IT IS SO ORDERED this 1 day of February, 1985.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

THOMAS SCHAEFER and JAMES P. KEETER, individuals, Plaintiffs,	)	
vs.	)	Case NO. 84-C-58-C
GEORGE A. SHIPMAN and CLARA SHIPMAN, husband and wife, Defendants.	)	

STIPULATION OF DISMISSAL

NOW on this 1st day of February, 1985, there comes before this Court the parties to the above captioned cause, by and through their attorneys of record, and pursuant to the provisions of Rule 41(a)(1) of the Federal Rules of Civil Procedure stipulate and agree that the same be and is hereby dismissed with prejudice.

Agreed and Approved:

JOSEPH L. HULL, III
ATTORNEY FOR PLAINTIFFS

FREESE & MARCH, PA

BY: _____
JOHN M. FREESE, SR.
ATTORNEYS FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DEUTSCHE CREDIT CORPORATION, a corporation,	)	
Plaintiff,	)	
vs.	)	No. 84-C-692-C
RICHARD A. JAGGARS,	)	
Defendant.	)	

JOURNAL ENTRY OF JUDGMENT

On the 21st day of January, 1985, this cause came on to be heard before the Honorable H. Dale Cook, Chief Judge of the United States District Court for the Northern District of Oklahoma, pursuant to the Motion for Default Judgment of the Plaintiff, Deutsche Credit Corporation, filed on November 9, 1984.

The Court finds that the Defendant has been duly served with Summons herein more than twenty (20) days prior to this date and has failed to answer or otherwise plead herein and is in default. The Court finds that the Defendant, Richard A. Jaggars, has failed to respond to Plaintiff's Motion for Default Judgment, and therefore, pursuant to Local Rule 14(a), waives any objection to said Motion and confesses the matters contained therein.

Thereupon, this case coming on for trial, trial by jury being waived, and the Court, having been fully advised in the premises, and on consideration thereof, finds that all of the allegations of Plain-

tiff's Amended Complaint are true as therein set forth; that judgment should be granted against the Defendant and in favor of the Plaintiff, adjudging that said Defendant is obligated under that certain Retail Installment Contract and Security Agreement, and Full Recourse Assignment, respectively attached to Plaintiff's Amended Complaint herein as Exhibits "D" and "E" and made a part hereof by this reference; and, that Defendant is in default of his obligation to pay Plaintiff pursuant to the aforementioned agreements.

The Court further finds that the gross amount due to Plaintiff from Defendant for the equipment described in Exhibit "A" of the Amended Complaint totals Thirteen Thousand Eight Hundred Ninety-Eight and 78/100 Dollars ($13,898.78), and, the Defendant is liable for delinquency charges in the amount of Four and 55/100 Dollars ($4.55) per diem accruing from and including November 6, 1984.

The Court further finds that the above-described property is no longer in the possession of the Defendant, that the Defendant has alienated said property without the Plaintiff's knowledge or consent and in derogation of Plaintiff's rights, and that said act of alienation constitutes a wrongful conversion of Plaintiff's property which has caused the Plaintiff to suffer damages. The Court finds that said wrongful conversion on the part of the Defendant was committed intentionally, willfully, maliciously, and with the intent to defraud the Plaintiff, and that such conduct on the part of the Defendant will justify an award of punitive damages in favor of the Plaintiff in the amount of Twenty-Five Thousand and No/100 Dollars ($25,000.00).

The Court further finds that the Plaintiff is entitled to

recover court costs in the amount of One Hundred Thirty-Two and 50/100 Dollars ($132.50) and for attorneys' fees in the amount of $3,039.79.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the said Defendant, Richard A. Jaggars, is hereby adjudged to be in default and that the allegations of Plaintiff's Amended Complaint be taken as true and confessed as against said Defendant.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Plaintiff, Deutsche Credit Corporation, is granted judgment against said Defendant in the principal amount of Thirteen Thousand Eight Hundred Ninety-Eight and 78/100 Dollars ($13,898.78), plus delinquency charges in the amount of Four and 55/100 Dollars ($4.55) per diem accruing from and including November 6, 1984; the Plaintiff is further granted judgment against said Defendant in the amount of Twenty-Five Thousand and No/100 Dollars ($25,000.00) in punitive damages; and further the Plaintiff is granted judgment for its court costs in the amount of One Hundred Thirty-Two and 50/100 Dollars ($132.50), and for its attorneys' fees in the amount of $3,039.79.

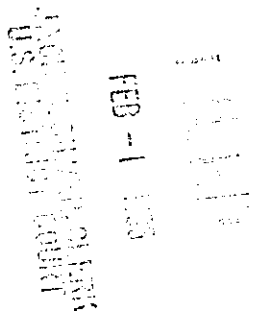
DATED this 1st day of February, 1985.

s/H. DALE COOK

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

KATHY STOUT and JAY STOUT, Plaintiffs,	)	
v.	)	No. 84-C-449-B
UNITED STATES OF AMERICA, Defendant.	)	



ORDER CERTIFYING QUESTIONS OF LAW
TO OKLAHOMA SUPREME COURT

Plaintiffs, husband and wife, bring this action pursuant to the Federal Tort Claims Act (28 U.S.C. §§2671 et seq.). They allege that on July 31, 1979, certain physicians, as agents and employees of the United States Government's Claremore Indian Hospital in Claremore, Oklahoma, negligently performed a surgical sterilization procedure on the wife known as a laparoscopic Falope ring application. Defendant's agents allegedly represented that the operation would successfully sterilize plaintiff Kathy Stout. On January 6, 1981, Kathy Stout gave birth to a healthy female child. Plaintiffs seek money for the following:

1. Additional surgical treatment required to sterilize the wife.

2. The additional financial burden of raising the child.

3. The emotional, physical and mental strain caused by rearing the child at a late stage in plaintiffs' lives.

4. The deprivation of the service, sexual relations, society and consortium of one another during Kathy Stout's pregnancy.

QUESTIONS OF LAW

Pursuant to 20 Okl.St.Ann. §1601 et seq., the Court hereby certifies the following questions of law which will be determinative of the cause now pending before this Court and as to which it appears there is no controlling precedent in the decisions of the Oklahoma Supreme Court:

I. Does Oklahoma recognize a cause of action in negligence against a physician for unsuccessful reproductive organ sterilization procedure of a patient?* (Male or female, married or unmarried).

II. If such an action is recognized in I above;

(a) What is the measure of damages?

1. In the event of conception do the plaintiffs or plaintiff have a duty to mitigate damages, such as by a timely abortion or attempt to place any child born for adoption?

2. In the event a child is born, does Oklahoma law authorize a reduction of money damages for child rearing if the finder of fact finds offsetting benefits due to the child's services and/or love and companionship?

The questions above are hereby certified to the Supreme Court of the State of Oklahoma. The Clerk of the Court shall forward a certified copy of the record together with this order.

ENTERED this 1st day of Feb., 1985.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

*Due to the body of existing general medical malpractice law in Oklahoma, it is presumed the answer to Question I is "Yes." The principal reason for the certified question is the need for guidance in answering Question II.